The Case of Leo Frank

A FACTUAL REVIEW OF ONE OF THE MOST SENSATIONAL MURDER CASES IN COURT ANNALS

By BURTON RASCOE

HALDEMAN-JULIUS PUBLICATIONS
GIRARD, KANSAS

FOREWORD

On a Sunday morning toward the middle of Spring 30-odd years ago, the body of a 13-year-old girl was found battered and strangled in the basement of a pencil factory, where she had been employed, in the heart of the business district of Atlanta Georgia.

Various suspects were taken into custody, grilled by the police and released. Three of these and a young girl employed at the factory gave information which led to the arrest and indictment of the superintendent of the factory. He was tried, found guilty and sentenced to hang for the murder.

In a series of appeals, which consumed nearly two years, the case was carried all the way to the Supreme Court of the United States. There applications for a new trial were heard and denied, first by two individual justices and finally by the full bench. The condemned man then was sentenced, for the fourth time, to die on the gallows.

On the eve of the scheduled execution, Governor John Slaton of Georgia commuted the prisoner's sentence to imprisonment for life.

Meanwhile, the case had become a *cause celebre*, one of the most sensational ones in juridical annals. What had started out as almost a routine murder trial, involving alleged rape, exciting little attention except locally and almost none outside the state, became a national, and almost an international, issue.

Emotions were fanned to the highest pitch by newspapers and magazines, by exhortations from the pulpit and in public meetings, and by unrestrained demagoguery on the part of private individuals and public officials.

All the ancient animosities between the North and South, which had lain dormant since the Civil War, were aroused and inflamed to white heat in an orgy of name-calling, charges, counter-charges and recriminations, nearly all of it irrelevent to the real issue. People who had only the vaguest notion of the facts in the case indulged in dogmatic and violent opinions about it, according to their environment, personal prejudices and sectional bias.

The nation-wide emotional debauch ended in a grim and sickening horror. On a hot night in August, two years to a day after the trial had ended, five automobiles filled with armed men, inflamed by liquor and debased with sadistic passion, bore down upon the state prison farm. There the mob disarmed the guards, broke into the dormitory, kidnaped the prisoner, drove 150 miles to the graveyard in which the body of the little pencil factory worker lay buried, hanged their victim to a tree beside the grave and indulged in a bestial orgy of mutilating the body.

Thus, in a brutal and horrifying travesty of justice, perhaps an innocent man died.

Perhaps he was guilty.

But even in the legal punishment for crime there should be no perhaps. There should be a moral certainty of guilt, reached by careful consideration of the facts. And whosoever participates in a lynching is a fiendish murderer who is guilty of a far worse crime than that which he seeks to avenge; for his is a crime against civilization as well as against the individual, against justice as well as against the laws which are designed to insure justice.

I said *perhaps* the man was guilty.

A jury of his peers, solemnly sworn to judge the evidence fairly and impartially, obviously believed so.

They held that his guilt had been proved "beyond reasonable doubt."

It is important to understand what that legal phrase means. "Beyond reasonable doubt," does not mean beyond all possible doubt or beyond any imaginable doubt. It means "proof to a moral certainty as distinguished from an absolute certainty. (Vide, Marshall's *Common Legal Principles*, Vol. II, p. 400.)

Five courts of appeal, including the highest tribunal in the land, held that the defendant had received a fair and impartial trial.

That is not to say that these courts held that the condemned man was guilty.

It was not in their province to decide on that. They were required to decide only upon the question as to whether or not there had been error, some flaw in correct trial procedure, which might tend to prejudice the jury.

In this case the defense alleged that certain incidents had occurred in court during the trial which were prejudicial to the defendant and of a nature to influence the jury.

All of the appellate courts, after reviewing the evidence on which these allegations of trial error were based, ruled that there were no grounds upon which to order a new trial.

From the trial judge to the Chief Justice of the United States Supreme Court, those who ruled not to upset the original verdict, as long as no trial error had been committed, were acting on the highest principles of justice. Two of the most sacred rights the individual possesses are the right to a speedy trial by a jury of one's peers, when accused of a criminal offense, and the right to a public trial. The latter has been guaranteed by laws to prevent secret trials. The laws have been modified by provisions whereby the public may be excluded from trials where the conduct of spectators tends to obstruct justice or give either the state or the defendant an unfair advantage.

The action of the courts of appeal in this case show how zealously the guarantees of the jury system are guarded. If they weren't so zealously guarded, an innocent man might be hauled into a secret court on a trumped up charge, prosecuted with no means whereby to refute the charges and summarily found guilty and executed. Or, if a jury should bring in a verdict that is unsatisfactory to a judge prejudiced against the defendant, he might reverse the verdict or keep on ordering new trials by different juries until a verdict was reached which suited him.

The laws are designed to protect the individual. He who is accused of a crime enters the court where his innocence is presumed. The burden is upon his accusers, as representatives of the state, to prove that he is guilty. The law is all in his favor from the start. And, in practice, it would seem that most juries act upon Blackstone's principle, "Better that 10 guilty escape than that one innocent suffer." Convictions in cases of capital crime are rare except when proof of guilt is manifest or overwhelming.

But jurors, like judges and lawyers and everybody else, are human beings, often swayed by emotion in their most determined efforts to be impersonal, reasonable and just, fallible in their deductions, deceived by testimony, influenced in their judgment by psychological phenomena of which they may not be aware.

The trial judge is there to minimize the possibilities of error in the jury's judgment. It is not his function to impress upon the jurors his private views of the defendant's guilt or innocence, but it is his duty to protect the defendant against an unjust verdict and to instruct the jury in the law as applied to the facts of the particular case so as to lessen the possibility of an erroneous verdict. The trial judge, however, has the authority to direct the jury to bring in a verdict for one side or the other, if, in his opinion, the state of the evidence requires it.

In the case I am about to review, the trial judge was, I think, estopped from directing a verdict and from ordering a retrial *by the misguided action of the counsel for defense.* Before the judge had charged the jury, counsel for defense requested the court to retire the jury because he had an application he did not wish the jury to hear.

The request was compiled with. The chief counsel for the defense thereupon made a motion for mistrial, citing five incidents, which he argued, constituted trial error. If, instead, he had asked for a directed verdict or a dismissal of the case on the ground that the state had produced insufficient evidence for conviction, the case, I believe, would have been retired and the defendant either exonerated or found guilty by an overwhelming weight of evidence.

Thus, probably, one of the most baffling murder mysteries in juridical annals would have been solved. And the case would never have aroused the furore that it did.

I first became interested in this baffling case 33 years ago. While it was still under appeal, I studied all the then available facts concerning it for three months and then published an article entitled "Will The State of Georgia Hang an Innocent Man?" My conclusion was that the state might be in danger of committing a grave error. I was urgent in my plea for a new trial. From the facts I was then able to gather it did not seem to me that the defendant had been proved guilty. On the contrary, it seemed to me that the evidence tended to indicate that one of the chief witnesses for the state was guilty of the crime and that the man he accused of it was innocent.

At the time, the official records of the voluminous testimony in the case were not available. I had to depend upon newspaper reports of the trial and upon isolated transcripts of the evidence taken down by unofficial stenographers. I was also in possession of a detective agency's report on the case; but this report I suspected at the time and later discovered to be biased and unreliable.

I have since studied the great body of the record of the trial proceedings, with minute care and diligence. I still think that the defendant's guilt was not established. But I am no longer convinced that one of his chief accusers was guilty.

My opinion is that the murder mystery, on the evidence, is insoluable.

I have, however, arrived at one perhaps startling conclusion about the case. I have not reached this conclusion hastily. I have meditated much upon it. I have read and re-read the official records from which I first derived a peculiar feeling about the case. This feeling developed into a solemn conclusion.

This conclusion is that the position of the chief prosecutor and of the chief counsel for the defense should have been reversed. I think the prosecutor was plagued throughout the trial with secret intimations that the man he was called upon to prosecute might be innocent; and that the chief counsel for the defense was plagued throughout the trial with secret intimations that the man he was called upon to defend might be guilty.

I believe this is the reason the case remains such a mystery. I shall show that both the chief counsel for the defense and the prosecuting attorney overlooked important considerations bearing upon the case. I believe that both seized upon untenable hypotheses which happened to coincide and that if these hypotheses had been discarded in favor of others the facts in the case would have been much clearer. I shall show that the prosecutor, consciously or unconsciously, offered the defense counsel gambits, time and time again, which would have demolished the state's contention, if the defense counsel had taken advantage of them; and that the defense counsel, consciously or unconsciously, ignored these advantages.

Finally, I think that counsel for defense, at the conclusion of the hearing, should have made an application for a directed verdict, on the ground that the evidence was not conclusive. This, if granted, would have meant re-trial. Inasmuch as the trial judge later said that he was of the opinion that the state had not presented sufficient proof of guilt, he undoubtedly would have honored a motion for a directed verdict.

But defense counsel's motion did not contend that the state's evi-

dence was inadequate, it was an implied criticism of the manner in which the trial judge had conducted the case. The trial judge, naturally and with reason, disagreed with that contention and left the verdict in the hands of the jury, after charging it in a little masterpiece of impartial instruction.

Once the case was out of the hands of the trial judge, this particular judge did not hold that his private opinion should outweigh the verdict of the jury. If the force of his opinion about the merits of the state's case had been strong enough, he could have set aside the verdict and granted a new trial. But, apparently, the force of his private opinion was not strong enough for that and needed the argument of the defense to support it. This, defense counsel did not offer; instead he accused the judge of trial error.

Defense counsel was not able to prove its contention of trial error even to the court of last resort. Hence the trial testimony was not reviewed by any appellate court, except the Georgia Supreme Court, which had before it not the whole body of the testimony but only a digest of it. The trial jury had had the first and final say on the question of the guilt or innocence of the defendant. A clement governor commuted sentence.

I give you the case of The People of the State of Georgia versus Leo M. Frank, defendant, charged with murder in the first degree.

THE CASE OF LEO FRANK

1. LEO M. FRANK'S BACKGROUND

Saturday, April 26, 1913, was Confederate Memorial Day in Atlanta, Georgia. North Carolina and South Carolina pay their respects on May 10 to those who died for the Confederacy; seven other Southern states honor them on Jefferson Davis' birthday which is June 3rd.; but Florida Mississippi and Georgia hold solemn holiday on April 26. Banks and most business offices are closed; workers, except in the essential enterprises usually have the day off, in which to view the parade or participate in it, lay wreaths on the graves of departed relatives and listen to oratory. On that particular day in Atlanta it was warm and clear.

Early in the week notices had been posted at the factory of the National Pencil Company at 37 South Forsyth Street that the usual work would be suspended on Memorial Day and that the employees would be paid off after 6 o'clock on Friday. But notice was also given that those who did not call for their pay envelopes on Friday could get them at the office of the superintendent at any time between 9 and 1 on Saturday.

The superintendent of the factory was Leo M. Frank. He was 29 years old, frail, about 5 feet 6 inches in height, weighing less than 120 pounds, bespectacled, serious-minded and reserved. He was born in Cuero, Texas, on April 17, 1884, the son of Rudolph and Rhea Frank; but his parents had moved to Brooklyn when Leo was three months old. There the boy grew up and was graduated from the public schools and from Pratt Institute. He then entered the school of engineering at Cornell University, from which he was graduated in 1906. After his graduation he worked for a while as an engineer for the B. F. Sturtevant Company of Hyde Park, Mass.

In 1907, a delegation of Atlanta businessmen came to New York seeking to interest Northern capital in the advantages of Atlanta for the location of manufacturing concerns. Among these advantages were cited the low wage scale obtaining in the South, the plentitude of women and children who were willing to work for small pay, the low tax rate of Atlanta, the low cost of land for building sites, the low costs for materials and construction, and the facilities of Atlanta for the distribution of products in an undeveloped consumer area.

Among the numerous possibilities which the Atlanta delegation suggested was that a factory supplying cheap pencils for school-children almost certainly would be highly profitable because the pencils sold in the South were manufactured in the North, where costs were high and most of the materials had to be imported. Cedar for pencils was abundant and cheap in Georgia.

Frank's father was an invalid as a result of a railway accident, in compensation for which he had received about $35,000. Of this amount, his parents had about $20,000 out at interest, which brought them an income of about $1,500 a year. Frank had a maternal uncle, Adolf, a man of some wealth, who believed that a pencil factory in Atlanta would be a good investment, and so organized a company toward that end, with himself as president and chief owner and Frank and his mother small stockholders. In 1908 Leo went to Europe for six months to study the pencil manufacturing business and, upon his return, the National Pencil Company began operations in Atlanta. Frank was draughtsman and engineer. The business prospered; Frank was promoted to a directorship, a vice-presidency, and the superintendency. His salary was $37.50 a week.

Normally, the National Pencil Company, including its subsidiary, the Georgia Cedar Company, employed about 150 persons. The main plant was a four story and basement building of fire-proof brick design, gas-lighted but electrically serviced for the machinery and for elevator. In April, 1913, the company was suffering from a general as well as a seasonal depression and a great number of employees had been laid off. Besides that, there had been a shortage in the supply of tin for the metal caps which held the pencil erasers and for several weeks the girls employed at the machines which affixed these metal caps had worked only part time.

Frank had married an Atlanta girl, Lucile Selig, during his first year with the National Pencil Company. They had no children. They lived at the home of Mrs. Frank's parents at 68 East Orange Street. The Selig residence was a two story frame building of seven rooms. They had one servant, a married Negro woman, Mineola McKnight, who did not "sleep in" but lived in her own home, coming to work at 7 o'clock in the morning and leaving about 8 at night. She did the cooking and general housework, for which she was paid $3.50 a week. Her husband, Arthur McKnight, sometimes did odd jobs around the place, like mowing the lawn and cleaning up the backyard.

During his six years' residence in Atlanta, Frank had become president of the local chapter of a religious society, but the circle of his acquaintances was limited. He was well-liked within his own small group, but he was not well-known outside it. On Saturday nights, friends of the family often came to the Selig home to play pinocle, but Frank himself rarely joined in the games, preferring to read the popular magazines instead. The Franks did almost no entertaining and Frank's chief recreation seemed to be that of watching baseball games. He attended the opera, during its brief season in Atlanta, but apparently with reluctance and without enjoyment.

On Saturday morning, April 26, 1913, Frank set out for his office at the National Pencil Company at 8 o'clock, arriving there at about 8:30. He returned home for lunch, went back to the office in the afternoon and returned for dinner about 6:20 p.m. He went to bed at about 10 o'clock.

Meanwhile, Mary Phagan, one of his employees, had left her home at 11:30 on that same Saturday morning to go to the factory to draw her week's pay.

Mary was 13 years and nine months old, plump, dimpled-cheeked, blue-eyed, golden-haired, mature for her age and unusually pretty, fresh and attractive. She had a pronounced knack for making the best appearance with little expenditure for clothes. She had often taken part in plays given at church socials and had been voted the most beautiful girl in her Sunday school.

Mary's father was dead. Her mother had remarried. Her stepfather's name was J. W. Coleman. She lived with her mother, stepfather and four other children in a cheap but neat house in Bellwood, then a suburb of Atlanta, which has since been incorporated as a part of the city. It was a poor but respectable neighborhood.

Mary had been put to work early, so she had received only a primary school education, and not even a consistent one because the family had moved around quite a bit. She was, in a way, typical of the child workers in the mills and factories of the South of the time—young and sturdy girls drawn from poverty-stricken farms and city slums to toil at machines for miserable wages in plants, largely operated by Northern capital which had been attracted by the low wage scale prevailing in the South.

Mary earned 5c an hour as a machine worker and ordinarily worked 12 hours a day, six days a week, making $3.60 for a full week's work. For the week ending April 26, 1913, she had worked only two full days because the supply of metal for her machine—which affixed metal caps for erasers to the pencils—had run out. Therefore she had only $1.20 coming to her.

As she set out that morning she wore a lavender dress trimmed with lace, clean underthings, stockings, high-heel slippers, a blue hat with a purple ribbon dangling from it, and she carried a parasol and a small meshbag.

She got on the street car at the corner of Marietta and Lindsay streets and was greeted by motorman W. W. Mathews and conductor W. T. Hollis. She got off at 12:10 p.m. at Broad and Hunter streets, within a block and a half's walk of the factory.

She reached the factory at approximately 12:12 p.m. where she called for her pay envelope in Frank's office on the second floor of the factory.

What happened to Mary Phagan within the next 13 minutes?

2. THE MURDER OF MARY PHAGAN

At 3:25 the next morning, Sunday, April 27, 1913, the telephone rang at central police headquarters in Atlanta. Desk Sergeant L. S. Dobbs took the call. The message at the other end of the wire was somewhat confused and incoherent; it was the voice of a badly frightened man. But Sergeant Dobbs was able to get these facts down:

The caller was Newt Lee, a Negro night watchman at the National Pencil Company's factory at 37 South Forsyth Street, a few blocks away. While going to the toilet in the basement, Lee said, he had stumbled over the dead body of a "colored woman." (In the dim light and because the face of the corpse was covered with soot and dirt, Lee had mistaken the body to be that of a Negro woman.)

Sergeant Dobbs reported the call to Captain J. N. Starnes and went with Patrolman W. F. Anderson to the Forsyth Street address. They were met at the door by Lee, who led them down the iron stairway to the basement. The first thing the officers noticed was that the cellar was lighted by a single gas jet, turned down low. Dobbs asked Lee why this was. Lee replied that when he had quit work the previous morning he had left the light burning bright but it had been turned down low when he entered the basement only a few minutse prior to his call to the police station; that he hadn't touched the jet; and that was why he had stumbled over the body—he hadn't seen it in the dark.

The police turned up the light. Dobbs took out pad and pencil and reported thus: He found the body of the girl face downward in front of the furnace. At first he could not tell whether she was white or black, because there was a deep gash in the back of her head which had matted her golden hair with blood and because her face and hands were covered with dirt and soot and her face was swollen black. When he pulled up her dress to examine her body he saw the flesh was white. There was a cord around her neck, deeply imbedded in the flesh. There was also a piece of white cloth, torn from her underskirt, tied around her neck. There was a bruise above the right eye but the skin there had not been broken. The girl's body was stiff and cold.

One shoe was off; it was found 130 feet away. On a trash pile in one corner was a blue hat later identified as belonging to the girl. A ribbon lay near the hat. To this inventory of the girl's effects, Patrolman Lassiter, who arrived some time later, added the parasol, which he had found at the bottom of the elevator shaft; it was furled and in good order. A thorough search failed to bring the girl's mesh bag to light.

In one corner of the basement, among some other trash there were several bundles of used order pads, with carbon impressions, bearing the printed date, 1908. One of these pads was found near the body. Sergeant Dobbs further reported that, covered with some sawdust beneath the girl's head, he found two notes scrawled in pencil, one on white paper and the other on yellow (or brownish) paper on which there were faint carbon impressions of itemized billings. These recently inscribed notes read:

"Mam that negro hire doun here did this i went to make water and he puched me doun that hole a long tall negro black that hoo it wase long sleam tall negro I wright while."

and

"he said he would (two words here seem to have been erased before the notes were entered into the record and three other words are not clearly distinguishable but look like 'laid down and') play like nigt witch did it but that long tall black negro did it buy his slef."

When Sergeant Dobbs completed his note-taking, he phoned a nearby mortician, W. H. Gheesling and the body was removed to his undertaking establishment where it was presently identified by someone unnamed as that of Mary Phagan. At about 5:30 Captain J. N. Starnes arrived with Patrolman W. W. Rogers and John R. Black. He ordered Rogers, Black and Anderson to make a thorough search of the building. Meanwhile he questioned the night watchman who had found the body. The Negro said he had been trying to reach Mr. Frank on the phone but had got no answer. Starnes phoned at intervals himself. At last, at about 7 o'clock, Frank answered the phone.

Frank was notified that he must come to the factory immediately. Frank replied that he hadn't had his breakfast yet and wanted to know if the nightwatchman was there. Starnes said he was; and then Frank asked if there had been a fire. Starnes said no. There were two different versions as to Starnes' next words. Frank said Starnes added, "there has been a tragedy." Starnes said he was careful not to disclose to Frank, over the phone, the reason he was wanted, and that he terminated the conversation by saying he was sending a patrol car up to Frank's house for him at once.

When Patrolmen Rogers and Black rang the doorbell at Frank's home, Mrs. Frank, attired in dressing gown and slippers, opened the door. Frank, who was only partially dressed, then came forward from the adjoining dining room, which was separated from the living room by some rope curtains through which he had been looking. Rogers told Frank he had better go upstairs and get dressed. Frank did so and came down in a few minutes. Meanwhile the policeman declined to answer any questions which Mrs. Frank asked. Nor did they say anything more to Frank until he was in the car with them.

Then Rogers asked, "Do you know a little girl named Mary Phagan?"

Frank said, "No."

Rogers said, "She had been found dead in the basement of the pencil factory."

Frank asked, "Did she work there?"

Rogers answered that she did.

Frank asked, "Did they find her pay envelope?"

Rogers and Black answered that question in the negative.

Thereupon Frank said, "I can't tell whether I know her or not until I see the body. I know very few of the girls who work at the pencil factory by name."

Then, instead of going directly to the pencil factory, the police car went to the undertaking establishment to which the girl's body had been removed.

The body was on a slab in the mortuary, the head inclined to one side. Frank, visibly shaken, threw a quick glance at the body, shuddered and walked out. He told the police he recognized the girl as one of the employees he had paid off on the previous day. He said he could tell if the girl's name was Mary Phagan by reference to the payroll records in his office.

Frank then went with the police to the pencil factory where they walked up to the second floor to his office. The office had an inner and outer section, separated by a railing; Frank's desk was in the inner office. The safe was in the outer office; it was placed in such a way that, when the door of the safe was open, it shut off the view of the hallway from Frank's desk.

In the presence of Captain Starnes, Patrolmen Rogers and Black, the Negro Newt Lee, and the assistant superintendent of the factory, N. V. Darley, who had just arrived on the scene, Frank opened the safe. He took the time book from it, containing the names of the employees and ran his finger down the list until he came to the name of Mary Phagan. Then he said, "Yes. Mary Phagan worked here. She was here yesterday to get her pay. I gave her an envolope containing $1.20, when she gave me her payroll number. The number would be on her pay envelope. I can tell you th eexact time she left. My stenographer left about 12 o'clock and a few minutes after she left, the office boy left. Then Mary came in and got her pay and left."

Frank then asked to see where the body had been found. They all went to the basement. Frank was in a great state of agitation. He noticed that the latch on the basement door, leading out into an alleyway, had been broken off and that the door was open a few inches. He went with Darley to a tool box on the second floor, got a hammer and nails and returned to the basement where he nailed up the door.

Meanwhile Lee had been taken to the police station and locked up on suspicion. Frank went back to headquarters with Captain Starnes where he gave a detailed statement about his movements on the previous day. He expressed deep concern about the crime and said he would not only offer any assistance he could but would also engage the services of the local branch of the Pinkerton National Detective Agency to pursue an independent investigation at National Pencil Company expense.

He suggested that, besides Newt Lee, two others should be questioned —a Negro named Jim Conley, who worked as a general handy man and janitor at the factory, and a white man named J. M. Gantt, formerly employed as a shipping clerk at the factory, whom Frank said he had discharged two weeks previously for stealing a dollar. He said he had seen Gantt at the entrance of the factory at six o'clock the previous evening; that he had given Gantt permission at that time to go upstairs to get a pair of shoes which Gantt had said he had left upstairs and that Gantt and Lee were inside the factory and the entrance door locked when he left for the day. He said that Gantt was on intimate terms with Mary. He intimated that these intimacies included immoral relations.

Captain Starnes was satisfied that Frank had no connection with the crime. He had told a straightforward story. He was very nervous, distractedly wringing his hands and wiping his brow; but, in the circumstances, this was natural enough. A brutal murder had occurred at his factory; it would create a scandal; the publicity might be bad. He had shown a great willingness to co-operate with the police. Captain Starnes released Frank, thanking him for his help, and went to Newt Lee's cell to see what the detective squad had got out of him by some of the more strenuous measures of the third degree. They had got nothing. Captain Starnes ordered the Negro held for further questioning.

Patrolman Black, who had been standing by while Frank was giving information to Captain Starnes, noticed a discrepancy in Frank's story. But he kept silent.

Frank went home and told his wife and parents what had happened. Friends and officers of the National Pencil Company gathered at the Frank-Selig home that afternoon and evening for details and with offers of help in solving the murder. Frank telegraphed his uncle, president of the company, in New York, that a "factory worker was found murdered in the cellar of the factory" and that Newt Lee, the night watchman had been arrested, but that Herbert Haas, attorney for the company, was on the job to protect the company's interests and that he was hiring the Pinkerton agency to make an independent investigation.

The next morning Frank summoned Harry Scott, manager of the local branch of the Pinkerton agency to his house and engaged him to work on the crime. Meanwhile he ordered the factory closed for the day except to the police, in order that the latter might have complete freedom in examining the premises.

At their first interview, Frank said to Scott, "I suppose you know all about the case from the newspapers."

Scott replied, "I know nothing about the case. I don't rely upon the newspapers for information; I dig it up myself. Suppose you give me a detailed account of just where you were and just what you did Saturday and yesterday."

Frank told him what he had already told Captain Starnes. Scott then advised him to go again to police headquarters and dictate what he had just said and sign the statement. Frank did this. His statement was taken down in the presence of Scott and Chief of Detectives Newport Lanford. Frank's statement, in brief, was this:

He went to work on the holiday, April 26, because he had some end-of-the-month financial statements to get out and mail to officers of the company and also because he had undertaken to pay off those who had not got their pay Friday evening. He reached his office about 8:30 where he found that the day watchman had been on duty since 6:30, the office boy, Alonzo Mann, was waiting for him and two carpenters, Arthur White and Harry Denham, were at work on the fourth floor, tearing out old partitions and putting in new ones.

Frank continued. N. V. Darley, assistant superintendent, and Wade Campbell, factory inspector, came in about 9 and he talked with them a while. Miss Mattie Smith came in while he was talking to Darley and Campbell and asked for her pay envelope and that of her sister-in-law. He opened the safe and took out the package of envelopes which Schiff, the cashier had given to him the night before and put them on his desk where he would have them handy. Miss Smith left and he was at work on his invoices when a Mr. Lyons, superintendent of Montag Bros., came in and left. He went to the post office accompanied part of the way by Darley at 9:30 and stopped on the way at the office of the Georgia Cedar Company, a subsidiary of the National Pencil Company, where he asked Miss Hattie Hall, company stenographer, to come over to his office and help him with some work. She declined to do so, wishing to enjoy a half holiday, until he assured her she might leave by noon. She preceded him to the office, while he went on to the post office. On his return at about 11:05 he told Halloway he could leave as soon as he wanted to and Halloway said he still had some work to do for White and Denham.

In his office he found a woman whom Miss Hall introduced as Mrs. Arthur White, who was waiting for Frank's permission to go upstairs to see her husband. He gave her permission. Then Miss Corinthia Hall and Mrs. Emma Clarke Freeman, two women who worked on the fourth floor, came in and asked permission to go upstairs to get Mrs. Freeman's coat. He granted this permission. The fathers of two boys who worked at the factory came in for their son's pay envelopes and he chatted with them for a while about some trouble one of the boys had got into. When these men left Mrs. Freeman and Miss Hall came in and asked permission to use the telephone. They left about 11:30. The stenographer left, checking out at 12.02, and the office boy left about the same time.

Frank continued: About ten or fifteen minutes after the stenographer left, the little girl who had been identified as Mary Phagan came in and got her pay envelope. Her envelope contained only $1.20 and she had apparently worked only two days, because of the exhaustion of the supply of metal for her machine, because she asked if the metal had come and he said he didn't know. He heard her footsteps as she went away.

He continued working on his accounts until he glanced at his watch and saw it was 12:45, and time for him to go to lunch. He knew his mother-in-law and his wife were going to a matinee and he phoned his house to see when lunch would be ready. The cook, Mineola McKnight, told him it would be served right away. He went upstairs to tell the carpenters and Mrs. White they would have to leave if they were going

out, because he was locking the front door. The men said they had enough work to occupy them until he came back. Mrs. White said she would leave right away. She followed him downstairs and left about 12:50.

He put away his papers, washed his hands, locked the doors and left the factory at about 1:10. He went home by street car, reaching there about 1:20, had lunch, lay down for a while and smoked a cigarette, and started back to the office. He was held up in traffic, because of the parade, for fifteen or twenty minutes and reached the office a little before three. The men on the fourth floor were just getting ready to leave. They came down with him and Arthur White borrowed $2 from him. They left about 3:10.

He found he still had considerable work to do. He had planned to go to the baseball game and had asked the night watchman the day before to come at four instead of at six. There was no way of reaching him to tell him he had changed his mind, so Lee came at four. He told Lee he could do whatever he wanted to do until six o'clock, but to be back by then.

Frank continued. He left his office at 6:02. When he got downstairs he saw J. M. Gantt in an argument at the door with Lee. Gantt wanted to go up to the fourth floor to get some shoes he had left there but Lee had been instructed to let no one in the factory after six o'clock. He told Lee to go upstairs with Gantt and look for the shoes. Lee locked the door behind him and Frank went home, arriving there about 6:30. He tried to phone Lee to see if Gantt had found the shoes and had left, but could not reach him until seven o'clock, when Lee said Gantt had gone.

Frank said that he read the newspapers until dinner was served, ate dinner, and afterwards some friends came in to play cards. He was tired, excused himself, read a humorous story in a magazine, went upstairs, bathed and was in bed by ten o'clock. He thought he heard the phone ring about 3 o'clock in the morning, but concluded it was a dream and went back to sleep. He woke up just in time to answer Captain Starnes' phone call. The reason he had not heard the phone ring before was that the phone was in the dining room on the first floor, while the bedrooms were on the second floor and the doors were closed.

Shortly after Frank had signed this statement, Scott got him alone and asked him if he was in his office all the time, from the time the stenographer and the office boy left until he went upstairs at 12:45 to notify White and Denham that he would have to lock the front door. Frank said he was.

Scott said, "You were in your office, did not step out of it even for a few minutes, then, from 12 until 12:45? Are you sure of that?"

Frank replied that he was sure.

3. THE SEARCH FOR THE MURDERER

Meanwhile, J. M. Gantt had been picked up, at Frank's suggestion, questioned and released. Conley, the Negro roustabout, had also been questioned and released under secret surveillance. The police wanted to watch his movments.

Newt Lee, the night watchman, was kept in jail and relentlessly grilled. Patrolman Black and Pinkerton Detective Scott had found a blood-stained shirt in the bottom of a trash barrel at Lee's house. Confronted with the shirt, Lee said he had owned a shirt something like it two years before but had not owned one like it since. He denied the shirt was his. He stuck to his story. It was:

He had been employed by the National Pencil Company as night watchman only three weeks. His hours were from 6 at night until 6:30 in the morning. On Memoraial Day he had been watching the parade and had got tired out about four o'clock and had gone to Frank's office and asked permission to take a nap in the packing room until time

to go to work. Although Frank had granted him permission to sleep there before, he refused him permission on Saturday and told him to go out and enjoy himself and return at six. He said he had then gone to a beer saloon and rested there until time to go back to the factory.

He said that when he returned to the factory, he went upstairs to punch the clock and that before he had time to do so, Mr. Frank told him to wait until he took out the old slips and put in new ones, dated April 28. Lee said he was at his post at the front entrance when Mr. Gantt came from across the street where he had been in a beer saloon and said he wanted to go up on the fourth floor to get some shoes he had left there two weeks before. Lee told Gantt he was not permitted to pass anybody into the factory after six o'clock. Just then Frank came downstairs and jumped back on seeing Gantt. Then Frank asked what Gantt wanted. Gantt explained. Frank said he had seen the shoes on a pile of trash a few days ago and they had since been swept out. Gantt said he hadn't left only one pair of shoes; he had left two pairs, one pair black and the other brown. Frank then told Lee to go upstairs with Gantt to look for the shoes. Frank left and Lee locked the door. He and Gantt ran the elevator up to the fourth floor, found the four shoes and came down. Gantt talked with Lee a few minutes and then went away.

About seven o'clock, Lee said, Mr. Frank called him and asked if everything was all right. He said Mr. Frank had never called him on the phone before.

After Frank had turned over his signed statement to Chief of Detectives Lanford, the chief asked Frank to go to Lee's cell and talk to him alone to see what he could get out of Lee. Lanford said the police had not been able to shake Lee in his story and that his alibi seemed air tight. Frank was alone with Lee for some time. He emerged saying that he hadn't been able to get anything out of the Negro that Lee had not already told the police.

But after Frank had gone, Lee reported that he had got something out of Frank. He said Frank had inclined his head and whispered, "If you keep up like this, both of use will go to hell." Lee had been chained to a chair throughout the interview and the first thing he said to Frank was (and this was Frank's version also) were: "Mr. Frank, it's mighty hard for me to be handcuffed here for something I don't know nothing about."

The police released Lee. He was in the basement of the factory the next day when he saw Jim Conley washing a shirt. He reported this to the police. The police picked up Conley and booked him on a suspicion of murder. They sent the shirt to the county chemist for analysis. The chemist found no evidence that the shirt had been stained with blood. Conley said the reason he was washing the shirt was he had been expecting a summons and wanted a clean shirt to wear to the police station.

All along the police had believed Conley was the murderer, not Lee. Lee had a fine reputation for sobriety, industry, gentleness and religious piety; Conley had a police record of six arrests and convictions for drunkenness and disorderly conduct. Lee was generally well-liked; Conley was generally disliked by members of his own race. Conley lived with a Negro woman who was not his wife in a shanty and was shiftless and always hard up. He owed money for a watch and he had drawn advances on his salary at the factory. Moreover, it was the consensus of opinion among the police and newspapermen that if Lee had been guilty of the murder, he would not have remained with the body and phoned the police; he would have got as far away from the scene of the crime as possible.

Alternate crews of police questioners grilled Conley day and night, eight hours at a stretch. He stuck to his story, which was this: That on Saturday morning, April 26, he had slept until 10 o'clock, it being a holiday. He went out about 10:30 and visited several saloons, having

a few drinks in each. Then he bought a can of beer, a pint of whiskey and some pan sausage. He returned home, cooked the sausage, drank the beer and whiskey fell across the bed without taking his clothes off and slept there until late Sunday morning. He said he had not gone near the pencil factory and knew nothing about the murder until Monday.

When Conley was confronted with the notes alleged to have been found beneath the head of the dead girl, he denied that he could read or write. When this was reported to Frank, Frank told the police that Conley was lying; that he not only could read and write but his favorite means of communication, even to make trivial requests, was by written notes; that he (Frank) had received many notes from Conley.

A Negro named Merney was found who alleged that Conley told him, when drunk, on the night of April 26 that he had "just killed a white girl." (This witness was not put on the stand) And the police alleged they had wrung a statement from Conley's paramour, Loraine Jones, that he had confessed to her that he had murdered the factory girl. (This witness did not so testify on the stand.)

The police let Conley languish in jail while they got busy trying to build up a case against him. The whole city administration, and particularly the police department, was under heavy fire from the press. Besides, there was a circulation war on in Atlanta between the conservative and long-established Atlanta *Constitution* and Hearst's Atlanta *Journal* and these papers were vying in demands for action on the part of the police. Since the first of the year there had been an even dozen of unsolved rape-and-murder crimes in the city and fourteen such crimes within less than a year. The papers were saying that if the murderers were not speedily found and brought to justice the people would rise up and demand an entire new police force. A political crisis was at hand; and it was plainly up to the city administration to find a scapegoat, innocent or guilty, to save their own hides.

The police thought they had their scapegoat already behind bars. A Negro is (or was) virtually disfranchised in Georgia; accused of rape and murder, he stands very little chance even of getting a trial, much less getting a fair trial, if his accusers have anything, even hearsay, to go on; his punishment is usually swift, if not ghastly and illegal. But, in Conley's case, the police, indefatigable and ruthless as they had been in their third degree methods and wringing alleged affidavits out of Conley's paramour and out of an irresponsible, gin-soaked barrel-house bum, they could find no one who would testify to having seen Conley in the neighborhood of the pencil factory on the day of the murder; nor could they assemble any other evidence that would justify an indictment.

Conley, they knew, had lied when he said he couldn't read or write; they knew pretty certainly that he was lying in every statement he made. But that was just the rub: they couldn't get a story out of him consistent enough to indict him; and they had been unable to wring a confession out of him with some of the most refined methods of third degree torture.

Meanwhile specimens of Conley's handwriting had been dug up and compared with many samples of his writing which the police had forced him to compose. These specimens were compared with the notes allegedly found beneath Mary Phagan's head in the basement the morning her body was discovered. The only handwriting experts available were bank employees who disagreed as to whether Conley had written the notes. Moreover, the police were anxious to prove rape as well as murder, in order to cinch the case. But County Physician Dr. J. W. Hurt, who had examined the body thoroughly on the morning the murder was discovered, and W. H. Gheesling, who had removed the body to his undertaking establishment and had prepared the body for embalming, reported that they had found no evidence of rape.

Dr. Hurt's report said the hymen was not intact, but that it ob-

viously had not been intact for some time, its lesions were thoroughly healed; that there was no violence to the girl's private parts; and that an examination of the vaginal tract disclosed no semen present nor any evidence of recent penetration; no congestion of the blood vessels of the vagina or uterus. The undertaker reported that the right leg of the girl's drawers was slit or torn up the seam, but there was no blood on her underclothes and no bruises on the covered portions of her body. There was a cord around her neck, deeply imbedded in flesh, he said. He estimated that the girl had been dead ten hours or longer when he examined her body at 4:30 in the morning; he was of the opinion that the wound in the back of her head was not sufficient to cause death and that it had been inflicted before she was strangled.

On Monday, April 28, the City Commissioners announced a reward of $1,000 for information leading to the arrest and conviction of the slayer of Mary Phagan and by nightfall the total rewards offered, including that of newspapers, amounted to $4,500. This complicated the work of the police without particularly aiding them. Persons eager for the reward came forward with preposterous stories and preposterous findings.

A machinist at the pencil factory brought some strands of hair which he alleged he had found on a projecting part of Mary Phagan's machine. He also claimed that he had found blood stains on the floor near the machine, which had been covered with a white calcium solution. It was his contention that Mary's death had occurred in the machine room, on the second floor of the factory; that she had been knocked or shoved and had fallen against the projection of the machine; and that this fall had caused the deep gash at the base of Mary's skull. Others came forward to declare they had found blood stains on the floor near Mary's machine and elsewhere on the second floor.

Portions of the floor were chipped out and sent to Dr. Claude Smith, city physician, bacteriologist and chemist, for analysis. He said his analysis showed the presence of a few blood corpuscles but he could not be sure they were human blood. His analysis of the hair compared with an analysis of the hair from Mary's head failed to establish that they were of the same texture or color.

4. LEO FRANK INDICTED

Late in the afternoon of April 29, events took a surprising turn and moved rapidly. Frank was arrested, taken into custody, booked and jailed on suspicion of murder. One of the arresting officers was Patrolman Black. The other was Pinkerton Detective Scott, who had been employed by Frank up until noon that day.

Scott had been discharged by Frank for doing what Scott was obliged, by city ordinance, to do. The ordinance requires a private detective agency to co-operate with the police and share with them all information privately secured by the agency. Frank had objected to this and had also objected to Scott's persistent questioning of himself.

And well he might; for Scott had disclosed to Chief of Detectives Newport Lanford that, from his very first interview with Frank he had proceeded on the theory that Frank was guilty. His reasoning was that there was no need for Frank to employ a private detective, if he was innocent, until after the police had failed to track down the murderer within a reasonable time. A guilty man, however, he said, might employ a private detective not only to allay suspicion against himself but also to throw the police off the scent by diligently seeking clues tending to fasten the crime upon some one else.

Scott said his suspicion of Frank deepened the more he investigated the case. He said he believed Frank had lied to him and to the police when he said he had not stirred out of his office between 12 and 12:45 p.m., on the day of the murder. Then, on questioning the girls at the

factory about the case and as to their whereabouts on the day of the murder, he discovered that one of them, Monteen Stover, had called for her pay at 12:05 on Saturday and had remained in Frank's office for about five minutes alone. She had seen no one when she came in, while she was there, or when she left. She decided Frank had gone for the day and went away without her salary. Before leaving, she had tried the door of the metal room across the hall from Frank's office, wishing to make use of the women's rest room, but had found the door locked. She was wearing tennis shoes at the time. These would have deadened the sound of her footsteps.

Patrolman Black had noticed a discrepancy in Frank's story on the morning the body was found. Frank had told him and Patrolman Rogers that he knew nobody by the name of Mary Phagan on the ride from Frank's house to the mortuary. And yet an hour or so later, in making suggestions to Captain Starnes, Frank said that Gantt was on familiar terms with Mary, hinting that the two had been carrying on an illicit love affair.

How would Frank know that Gantt and Mary were intimate if he did not know Mary's name and could identify her only by a payroll number? Black had asked himself. Black had then questioned Gantt about Frank's knowledge of the murdered girl and Gantt had said Frank had been pursuing her with attentions, without success; that he had often heard Frank call her "Mary" and had seen him standing beside her, while she was at work, with his hand resting on her shoulder. A number of other employees had told Black that Frank called Mary by her first name and showed her marked attention.

A factory worker named Helen Ferguson had told the police she had called for Mary's pay envelope on Friday at Mary's request and that Frank had refused to give it to her, saying Mary would have to call for it herself.

Scott had cut a piece from the bloody shirt found in Newt Lee's trash barrel, shown it to Frank and asked him if he had ever owned a shirt made from such material. Frank had replied emphatically that he never had owned such a shirt. The emphasis was suspicious, according to Scott, inasmuch as the material was a very common one for shirts. A less suspicious reply would have been that he may have owned at one time, or still possessed, shirts made of such material. Scott thought it was possible that the shirt was Frank's but he was at a loss to explain how it may have got into Lee's trash barrel, inasmuch as Frank could hardly have put it there himself. Lee lived in the Negro quarter and the presence there of a white man, other than the police, would have excited notice.

The police had procured a number of affidavits from former and present employees of the factory testifying to Frank's reputation for lascivious conduct with various girls at the factory. And they had wrung out of Mineola McKnight, cook at the Frank household, an affidavit swearing that Frank came home drunk on the night of the murder, threatened to kill himself and would not allow his wife to sleep in the same bed with him. Mineola repudiated this affidavit on the stand, saying she had signed a statement without knowing what was in it in order to get released from jail and that there was no truth whatever in the statements of the affidavit. Other testimony accumulated by the police was later deemed equally questionable by the prosecution and not produced in court.

But the evidence against Frank seemed sufficient to a corner's jury to recommend that he be held to the grand jury on a suspicion of the murder.

A "blue ribbon" jury, including five members of Frank's religious faith, was impaneled. At the conclusion of the jury's secret hearings, Frank was indicted on May 24 for the murder and Jim Conley was indicted as an accessory.

CONLEY IMPLICATES FRANK

The reason for this sensational development of the case became apparent on the day Frank was indicted. For, on that day, the police released to the press a statement signed by Jim Conley differing very radically from a signed statement he had made on May 18 in which he had denied he had been at or near the pencil factory on the day of the murder. The police had obviously wrung this new "confession" out of Conley some days previously but had withheld it until it had been considered by the grand jury and had helped to bring about Frank's indictment.

In this statement of May 24, Conley said: That on Friday, the day before the murder, Frank had come to him at the factory and asked if he could write, to which Conley replied that he could "a little"; that Frank thereupon produced a scratch pad and told him to write, "Dear Mother a long tall black Negro did this by his self"; that he wrote it three times at Frank's request; and that Frank gave him a cigarette box containing two one dollar bills and two quarters and said, "I've got wealthy people in Brooklyn. Why should I hang?"; that on Tuesday, "before Mr. Frank got in jail he whispered to me to be a good boy and that was all he said." (The newspapers, incidentally, were full of Frank's history at the time, though not as a suspect, but only as superintendent of the factory; and these stories stated that Frank came of a wealthy family in Brooklyn.)

This story of Conley's was a little too bizarre even for the police. But they kept questioning him. Four days later, May 28, Conley had still another story ready. He signed a statement saying that he had lied in previous statements; that on Saturday morning, April 26, he went to three saloons drinking beer and whiskey; that he ran into Frank when the latter was on his way to Sigmund Montag's office about 10 o'clock in the morning; that Frank told him to wait a few minutes until he came out of Montag's office; that when Frank came out, he asked Conley to go back to the factory with him; that there Frank took a box and put it next to the trash barrel on the first floor, near the entrance to the elevator; that Frank went upstairs and "a young lady come down, that was Miss Mattie (Hall); then Mr. Darley come down; I heard Mr. Darley say 'Don't worry, I'll see you get that next week.' Then Mr. Holloway comes down about five minutes after Mr. Darley is gone; then a colored peg-legged fellow comes down and then Mr. Holloway went upstairs and came down and left for good; then another lady in a green dress stayed upstairs seven or eight minutes and comes down and left.* Then Mr. Frank whistled for me twice. I went upstairs and the double

* It will be noted here that, four days after Frank had been indicted, Conley does not mention having seen Mary Phagan going up to Frank's office. He mentions having seeing a lady in a green dress go up, stay seven or eight minutes, and come down. This young lady, presumably, is intended to account for the presence of Monteen Stover. Even in his fourth statement, 5 day's after Frank's indictment, which on the points regarding those who came and went is practically the same as in his statement of May 28, he does not mention having seen Mary go upstairs. Nor does he identify the girl in the green dress as Monteen Stover. On the stand his memory has become remarkably clear on this point. He said the next person he saw "was this Miss Mary Parkins. That's what I call this lady that is dead." And he said he heard people go into the metal room and a lady's scream. Only then did he see Monteen Stover—and he remembered her name—go up and come back down. Monteen, incidentally, did not hear any scream and said she saw no one at the factory.

doors on the stairway was closed. 'You heard me, did you?' Mr. Frank asked. I said 'Yes.' He grabbed me by the arm; he was trembling and carried me into his office, then he said, 'Gee, here comes Miss Emma Clark and Miss Corinthia Hall.' And he came back to me and gave me a shove and put me into the wardrobe. They stayed a long time and I was hot in there and sweating. After I got out, he asked me could I write and told me to put down 'Dear Mother, a long tall black Negro did this by hisself.' I wrote Negroes and he said 'Don't put no 's' in, they's only one Negro.' I wrote it three times. Then Mr. Frank said, "Why should I hang? I have wealthy people in Brooklyn.' I have no idea what he meant. Then he asked me if I knew the night watchman and had I seen him in the basement; and I said No. Then Mr. Frank said he was going to send the note I had written and a letter to his people and recommend me to them. He said, 'I have wealthy people in Brooklyn.' Then he began cutting up and joking with me and said, 'I will see you Monday if I live and nothing happens, James.' I asked him, 'Is that all you want of me?' and he said 'Yes' and took out two dollars and fifty cents and told me to get drunk and go home. I went to the picture show and went home and lay down across the bed and didn't wake up till twelve o'clock Sunday."

(Author's note: Except for the words within quotation marks, I have briefed Conley's statement, because it was verbose; but I have preserved the essentials, including the incongruities and incoherencies of it. The reader will do well to study the above statement—and all of Conley's statements—carefully.)

CONLEY'S STATEMENT, MAY 29.

The next day, May 29, Conley signed a fourth statement. In this story, he repeated, in effect, his story of May 28 of having met Frank in front of Montag's office about 10 o'clock. (Reader, please bear this time and circumstance in mind, because, as will be seen later, Conley, on the stand, was to relate an entirely different story, his fifth, version of this encounter.) Conley went on to say that, after he and Frank got back to the pencil factory, he waited downstairs while Frank went upstairs. Then, he said, Frank came down and asked him if he wanted to make some money. Frank told him he had picked up a girl and let her fall and her head hit against something and he wanted me to move her "I hollered and told him the girl was dead and he told me to pick her up and bring her to the elevator and I said I didn't have nothing to pick her up with and he told me to go to the cotton box and get a sack. I carried her on my shoulder and she was too heavy and slipped off and fell. I hollered to Mr. Frank to come and help me and he said, 'Sh—hh!' and we picked her up by the head and feet. He went back for the key to the elevator and unlocked the elevator door and we went down. He said to back it up to the sawdust pile. He went up the ladder." Then, said Conley, in Frank's office, Frank gave him a cigarette box containing $2.50 and "let me have two hundred dollars." Then Frank took back the money and said "I will make it right with you Monday."

As will be seen later, these fantastic and contradictory statements of Conley's formed the foundation upon which the state built its case against Leo M. Frank. But it was only the foundation. And, inasmuch as it was shaky foundation, the state did not lay any particular stress upon it, except to insist that, essentially, Conley's story on the stand (differing, though it did, from all of his previous statements) was true. The state laid its greatest stress upon (1) its contention that Frank was given to immoral and perverted sexual practices; that he had seduced a number of young factory workers, employing Conley as a look-out while engaged in perversions in his office on Saturday afternoons; that he had tried to seduce Mary Phagan but she had repulsed him; that he refused to give Mary's pay envelope to a friend of Mary's on Friday afternoon in order to force Mary to call for her money on Saturday, a

holiday, when the factory would offer him comparative freedom from intrusion; that he had followed her from his office into the machine room, bent not upon murder but upon lust; that he had struck her when she repulsed him causing her to receive the gash in the back of her head which had rendered her unconscious; that he had gratified his lust in the ladies rest room near Mary's machine; that he had strangled her, in his fright, with the cord found around her neck; that he had employed Conley to take the body to the basement there to burn it in the furnace; that Conley had gone to a saloon to fortify himself for the job of cremation but had got drunk and did not come back; that Frank had previously dictated the notes to Conley and had placed them beside the corpse in case the body was found before the body could thus be cremated the next day; and (2) the element of time; and (3) the testimony of Monteen Stover, a 14-year-old co-worker of Mary's, whose presence at the factory on the fatal Saturday was unknown to Frank until she was put on the stand as a witness for the state.

Over 300 witnesses were subpoened for the trial, which began on July 28, 1913 in the court house, of the Fulton Superior Court, Atlanta, Judge L. S. Roan presiding. The prosecutor was Solicitor General Hugh A. Dorsey, assisted by Harry Hooper and E. A. Stephens of the Solicitor-General's office. The attorneys for the defense were Reuben Arnold and L. Z. Rosser of the famous Atlanta firm of Arnold & Rosser, aided by Herbert Haas, attorney for the National Pencil Company.

4. THE TRIAL

The summary to the jury of what the state was going to seek to prove was delivered by Assistant Solicitor-General Hooper. In brief these points which the state was going to seek to establish as facts were:

Mary Phagan met her death at the hands of Leo M. Frank in the process of rape, which constitutes murder. The rape was premeditated. Frank had seduced several other young girls in his employ and had made unsuccessful advances to the beautiful 13-year-old Mary Phagan. He knew she was coming to his office on Saturday before one o'clock for her pay envelope, because Mary had asked her friend, Helen Ferguson, to get her pay envelope on Friday when Helen called for her own salary and Frank had refused to give Helen the money, saying that Mary would have to call for it herself. It was unusual for Frank to refuse such requests, for on that very day he had given the pay envelopes of other employees to friends at the factory who signed for them and, on the morning of the murder, had given the pay envelopes of two boys employed at the factory to the fathers of these boys. Conley had often been employed by Frank to act as a look-out at the factory and see that Frank was not disturbed while he was performing immoral and perverted acts. Frank had asked Conley to come to the office on Saturday for another purpose of this kind.

Hooper's presentation continued: Frank's contention was that he did not stir out of his inner office from 12 noon, on Saturday, April 26, until 12:45 p.m., when he went upstairs to notify the workmen on the fourth floor that he was leaving and would have to lock the doors. The state contends that Mary Phagan came to Frank's office, at about 12:12 p.m., and got her pay; that, as she was leaving, she asked Frank if the metal had come for the machines and that he replied, "I don't know" and followed her into the machine room, using that reply as an excuse to do so. Once inside the door of the machine room, he made advances to her; she repulsed him; he hit her, knocking her down; he dragged her into the women's rest room, raped her, and strangled her to death. He left the body there and made immediate plans to dispose of it. At 12:45 he went up to the fourth floor to clear the three remaining persons (besides Conley and himself) out of the building; but in this he was successful only in getting Mrs. White out, the two workmen choosing to stay there until they had finished their job. After Mrs. White left,

Frank called Conley and told him he had "struck the girl too hard" and the two of them took the body, in the elevator, to the basement where Conley agreed to burn it after he got back from lunch. Frank gave Conley $2.50, then gave him $200 to burn the body but took the money back, saying he would pay Conley when he had performed the act of destroying the body and the evidence.

Hooper laid particular stress upon the fact that, whereas the defense contended that Frank did not stir out of his office from 12 o'clock to 12:45, that was because Frank when he told his story to the police, did not know that Monteen Stover had called at his office after 12 o'clock that day, had remained there for five minutes seeing no sign of Frank and had left without her pay, after trying the door to the machine room and finding it locked. The state's contention was, Hooper declared, that during that time Frank was absent from his office, he was engaged in the rape and murder of Mary Phagan in the machine room.

(Author's note: The reader is here asked to bear in mind that Hooper's contention was that there was a lapse of time between the commission of the murder and the removal of the body from the second floor to the basement; that the body was not removed until *after* Mrs. White left the building at about 12:55. Yet, in Solicitor-General Dorsey's summation to the jury, his argument was that the murder and the removal of the body were practically a continuous process. Dorsey characterized Quinn's testimony that he was in Frank's office from 12:20 to 12:25 as perjury. Conley testified that the body was removed to the basement between 12:56 and 1:20 p.m., but his story of the events of that day, as he told it in an uninterrupted narrative on the stand, was, as will be shown below, that the removal of the body occurred right after the murder.)

Now the most pertinent testimony at the trial follows:

MONTEEN STOVER: Arrived at the factory at about 12:05 p.m.; went into Frank's office; he was not there; saw no one; remained sitting in Frank's inner office for about five minutes; left, concluding that Frank had gone for the day; heard no screams or voices; saw no one at the entrance to the building or inside the building; on the way out from Frank's office, tried the door to the machine room, wanting to go to ladies' room; found the door locked; was wearing tennis shoes, yellow hat and brown raincoat.

R. P. BARRETT, machinist at the National Pencil factory: On Monday, betwen 6:30 and 7 a.m., found some spots on the floor that were not there Friday when I left; also found some hair on the handle of a bench lathe, which was turned over to the police. (Barrett's time-placing was erroneous; the factory was closed on Monday except for police inspection; also see next testimony.)

DR. CLAUDE SMITH; city chemist: Examined stains on wood chipped from second floor machine room: found five blood corpuscles but not sure they were human blood corpuscles. (Further testimnoy was introduced by the defense to show there are 8,000 blood corpuscles in one drop of blood, whereas only five corpuscles were alleged to have been found; also testimony was introduced to show that accidents were frequent in which there was loss of blood in the machine room and that the specimen was examined from a chip of the flooring which was covered with many layers of grime and varnish. Also, it was testified variously that the "hair" was not hair. but four strands of wool; that the hair was not like Mary's in color; and that it was like Mary's. (Methods of crime detection were crude in those days.)

W. W. MATHEWS, motorman on Atlanta street car lines: Mary Phagan, whom I knew very well, got on board my car at Lindsey Street at 11:50 a.m., April 26; we got to Broad and Hunter Streets at 12:10 p.m.; Mary left the car at that corner; the National Pencil factory is a block and a half away from Broad and Hunter.

W. T. HOLLIS, conductor on Atlanta Street car lines; Knew Mary Phagan very well; she usually boarded my car; she got on our car at

Marietta and Lindsay Streets at 11:50 a.m., April 26; usually gets off at Broad and Hunter Street, where we arrived on schedule at 12:10; Mary that morning rode around the block to Whithall and Mitchell Streets before getting off. (Employees of the street car company were then introduced with their time tables and reports on adherence to schedule and delays. They corroborated the testimony of Matthews and Hollis that the street car on which Mary rode into town reached Broad and Hunter Streets at 12:10 p.m., on the 26th of April. Witnesses who had paced off the distance from Broad and Hunter Street to the factory and upstairs to Frank's inner office, established that the time required by Mary to reach Frank's office—if she went directly there—from Broad and Hunter Streets was about two minutes, longer if she rode another block, as Hollis testified, and longer, if she strolled or paused on her way. Mary, therefore, could not have reached Frank's office before 12:12 p.m.)

CORINTHIA HALL, employee at the National Pencil factory: went to Frank's office, with Emma Clark, for our pay, arriving there about 11:30 a.m.; went upstairs for coat, came down, used phone and chatted with Frank a few minutes; saw Miss Hattie Hall, Frank's stenographer, the office boy and no one else; there was no one at the door when we went in or came out; went to the Busy Bee restaurant about a quarter of twelve and had lunch; while there Lennie Quinn came in, sat down and chatted with us a while; said he had just been over to the factory and talked to Frank.

EMMA CLARK, employee at the National Pencil factory: testimony same as Corinthia Hall's except that she said Quinn came to the Busy Bee after she and Corinthia had finished their lunch and had paid their check; that he sat and talked with them a while and said he had just come from Frank's office.

LENNIE QUINN, N.P.C., foreman: Went to Frank's office about 12:20 p.m., Saturday, April 26; staid there talking to Frank for approximately five minutes; saw no one there except Frank; there was no one at the door, either when I went in or came out. (If true, this would have givne Frank only 13 minutes to commit the assault and strangulation. B. R.)

MRS. J. ARTHUR WHITE, wife of carpenter employed with Denham on the fourth floor on April 26: Saw, my husband at the pencil factory, April 26, from 11:30 to 11:50 a.m.; left and came back at 12:30 and left again at 1 p.m.; at 11:30 saw no one at the entrance but, on the second floor, saw Mr. Frank, Miss Hall, his stenographer, and two men; asked Mr. Frank if I could see my husband; he said he would send some one up with me; sent one of the men; I came down and went out and did some shopping; returned at 12:30, Mr. Frank was standing outside of his office and jumped when he saw me come up the stairs; went to the fourth floor and was there with my husband and Mr. Denham, when Mr. Frank came up and said he had to lock the doors and I had to leave; he was in a hurry, but when I went downstairs to leave, I saw him sitting at his desk in the outer office in his shirt sleeves; there was a Negro sitting on a box, near the door, on the first floor; I am not sure it was Conley; the light was dim; did not notice the Negro very closely.

HELEN FERGUSON, machine operator, N.P.C., factory friend of Mary Phagan's: Went to Frank's office at Mary's request on Friday to get Mary's pay envelope for her; Mr. Frank refused to give it to me; said Mary would have to call for it herself.

MAGNOLIA KENNEDAY, machine operator at N.P.C.: I was with Helen Ferguson on Friday, April 25, when we both went to get our pay; Mr. Frank was not paying off that day; we both got our pay from Mr. Schiff; Helen said nothing whatever about Mary's pay to Mr. Frank or Mr. Schiff.

HARRY SCOTT, manager of the Atlanta branch of the Pinkerton National Detective Agency: While Conley was in jail, I gave Conley pencil and pad and dictated the words of one of the notes to see how long

it would take him to write it; it took him six minutes to write part of one note; Conley alleged he wrote the note at Frank's dictation three times. (This testimony was introduced to show that all the occurrences which Conley related, including the writing of the notes, could not have taken place within the 34½ minutes which Conley claimed they did and which Hooper for the state contended was all the time expended from the time Frank summoned Conley upstairs to tell him of the "accident" until the body was left in the basement. Incidentally, Hooper for the state contended one thing and Dorsey for the state contended another about the time element. Scott was called to the stand on several occasions to testify on certain specific points, notably as to what Frank told him on their first interview; but, with one exception, this statement about the time Conley consumed in writing, was Scott's only pertinent testimony. The other pertinent testimony he offered was that concerning Frank's exact words to him concerning his answer when Mary asked Frank about the metal; Scott testified that Frank said he had said to Mary, "I don't know." The defense argued that Frank's reply was a simple, "No," whereas the state attached great significance to "I don't know," as giving Frank an excuse to follow Mary into the metal room where she had gone to find if the metal had come.

VARIOUS WITNESSES, including two newspapermen and several police officers were put on the stand to testify that they had conducted experiments to determine the time it would have taken Conley to do what he related he did, and that the time consumed could not be less than 50 minutes, and probably at least 56 minutes, instead of the 34½ minutes alleged by Conley and the state.

J. M. GANTT former shipping clerk and sometimes pay rool clerk at the National Pencil factory; Friend of Mary Phagan's since childhood; accused by Frank of a one dollar shortage in payroll account, two weeks before the murder; refused to make restitution, because he said he had not stolen the dollar; chose to quit first; had often seen Frank show marked attention to Mary Phagan and heard him call her "Mary"; on Memorial Day evening, about 6 o'clock, dropped by the National Pencil factory to pick up some shoes left there two weeks before; night watchman, Newt Lee, would not let him in, saying he had orders to let no one in; Frank came down the steps, seemed frightened on seeing Gantt; said, "Howdy, Mr. Frank, and told him I wanted to get some shoes I had left on the fourth floor in the shipping room; Frank said he had seen a pair of men's shoes on a pile of trash several days ago but they had been swept out since then;" Gantt then said he had left two pairs of shoes upstairs, not just one; then Frank directed Lee to go upstairs with him; they went up in the elevator, which was unlocked, got the shoes and came down; Lee had locked the door behind him and Frank had gone; he stood chatting with Lee a few minutes and then left.

NEWT LEE; Negro night watchman: Mr. Frank told me on Friday to come to work at 4; came at that time; Mr. Frank came to the door, rubbing his hands and said he was sorry I came so early; told him I had been watching the parade, was tired and badly needed some sleep and could I lie down in the packing room; but he said I needed a good time and to go downtown and stay an hour and a half and be back by six sure; when I got back the doors were unlocked just like I had left them; Mr. Frank says, "What time is it?"; I says it's two minutes of six; he says Don't punch the clock yet, there's a few worked today, I want to change the slip'; when Mr. Frank put the tape in, I punched it and went downstairs. Mr. Gantt came from across the street from the beer saloon and says, 'I got a pair of shoes that I want to get upstair and have fixed'; I says I ain't allowed to let anybody in after six; then Mr. Frank came bustling out and ran into Mr. Gantt and jumped back frightened; Mr. Frank said he thought he saw the shoes on a trash pile the other day and they had been thrown out, when Mr. Gantt told him what he wanted; but when Mr. Gantt insisted on going up, Mr. Frank said, "Take him on up, Newt," and I locked the door and Mr. Frank

left and we went upstairs and found the shoes in the shipping room and came down in the elevator and Mr. Gantt left; Mr. Frank phoned me about 7 o'clock, the first time he had ever done that, and asked me, "Is everything all right?"

DR. J. W. HURT, county physician: Examined body of Mary Phagan morning of the murder; no violence to the private parts; hymen not intact, but not recently ruptured, long healed; no semen or spermatazoa in the vaginal tract; no abrasions or evidence of recent penetration of vaginal tract; no evidence of pregnancy; no congestion of blood vessels around uterus or vagina; not of the opinion that the girl had ever been raped.

DR. H. F. HARRIS, physician, witness for the state: examined body and contents of the stomach after the stomach had been removed for embalming: Contents of the stomach, consisting of cabbage and wheat bread or biscuits, indicated the victim had received blow within half an hour after eating the meal; blow at back of head sufficient to cause unconsciousness and stop digestive process but not sufficient to cause death; death caused by strangulation; of the opinion that girl lived from one half to three-quarters of an hour after eating meal; no sperm in the vaginal tract; no evidence of violence to parts, except to walls of vagina, which might have been produced by finger or by other means. (In rebuttal of this testimony, the defense introduced medical testimony that cabbage is hard to digest and that no one could tell how long the food had been in the girl's stomach before she was killed; that Dr. Harris had examined the body *nine days after it had been embalmed.* Dr. J. C. Olmstead, Dr. W. S. Kendrick, Dr. Leroy Childs and Dr. Thomas Hancock testified that they had preferred charges against Dr. Harris with the Board of Health, accusing him of dishonesty.)

JIM CONLEY, Negro, 27 years old, employed by National Pencil Company for two years as janitor and general handyman: Lives with Loraine Jones; not married to her but has sexual intercourse with her; arrested six times for drunkenness and disorderly conduct; can read and write but not very well; can spell simple words like "beer" but can't spell words like "whiskey"; can't make any sense out of the words in the papers; got there the same time Mr. Frank did, 8:30 Saturday morning; he told me Friday to come Saturday and do like I done before; I always stayed on the first floor and watched for Mr. Frank while he and a young lady would be on the second floor chatting. He always told me that when a young lady came he would stomp on the floor and I was to lock it and when he whistled I was to open it. He says, "Now what I want you to do is to watch for me today as you did on other Saturdays" and I says all right and went out and came back about noon. Then Mr. Frank says, "There will be a young woman up here after a while and me and her are going to chat a little; now when the lady comes I will stomp like I did before and that will be the lady and you go and shut the door. When I whistle I'll be through, so you can go and unlock the door and you can come upstairs to my office like you was going to borrow some money and that will give the young lady time to get out." The first lady that came along was a lady that worked on the fourth floor, don't know her name. Next person was a Negro drayman. He went upstairs. Next I saw Mr. Holloway and the drayman, a peg legged fellow, coming down the steps. Mr. Darnley come down and left. Mr. Holloway come down and left. Next person I saw was Mr. Quinn. He went upstairs and stayed a while and then came down. Next person I saw was this Miss Mary Parkins. That's what I call this lady that is dead. After she went upstairs, I heard her footsteps going toward the office, heard two or three people walking out of the office like they were coming down the steps. But they didn't come down. They went back towards the metal department. After they went back there I heard the lady scream. Then I didn't hear no more. Next person I saw coming in there was Monteen Stover. She came back down the steps and left. Then I heard some one tip-toeing back toward the metal department. After that

I dozed off and went to sleep. Next thing Mr. Frank was up over my head stomping and then I went and locked the door. Next thing I heard him whistling. I went and unlocked the door just like he said and went up the steps. Mr. Frank was at the top of the steps. He said, "Did you see that litle girl that passed here just a while ago? She came into my office a while ago and I wanted to be with the litle girl and she refused me and I struck her and I guess I hit her too hard; she fell and hit her head against something and I don't know how bad she got hurt. Of course you know I ain't built like other men." I have seen him with women lying on the table in the factory room and in the office with women with their clothes up. He asked me to go back there and bring her up so he could put her somewhere and said to hurry, there would be money in it for me. I came back there and found the lady lying flat on her back with a rope around the neck. The cloth was also tied around her neck and part of it was under the head, like to catch the blood. I noticed the clock? It was four minutes to one. I came back and told Mr. Frank the girl was dead and he said, "Shhh!" He told me to go back there by the cotton box and get a piece of cloth and put it around her and bring her up. I saw her hat and a piece of ribbon lying down and her slippers and took them and put them all in a cloth. Then I tried to carry her out but she was heavy and I called to Mr. Frank to help me. He caught her by the feet and I laid hold of her by the shoulders. Then he got the key to the elevator and we took her to the basement, where I left her. I opened the cloth and rolled her out on the floor. We both went back up to his office. He looked out the door and said, "My God! Here is Emma Clark and Corinthia Hall! Come here, Jim." And he put me in a wardrobe and they came in there and I heard them go out and Mr. Frank came and said "You are in a tight place. You done very well." He taken a cigarette and a match and hands me the box of cigarettes and I lit one and then he said, "Can you write?" and I said, "Yes, a litle bit." And he takes his pencil to fix up some notes. I was willing to do anything for Mr. Frank because he is a white man and superintendent. I sat down at a table and Mr. Frank dictated the notes to me. Then he pulled out a roll of greenbacks and says, "Here's $200." I took the money and after a while Mr. Frank looked at me and said, "You go down there in the basement and take a lot of trash and burn that package that's in front of the furnace." I told him "All right." But I was afraid to go down there by myself. He said, "There is no need of me going down there." He looked at me kind of frightened and said, "Let me see that money," and he put it back in his pocket and said, "You keep your mouth shut. That is all right. Why should I hang? I have wealthy people in Brooklyn." I said. "Mr. Frank, what about me?" and he said, "That's all right. Don't worry. Just come back to work Monday like you didn't know anything and keep your mouth shut. If you get caught I will get you out and send you away. Can you come back this evening and do it?" I said, "Yes. I was coming to get my money." He said, "Well, I am going to get dinner and you come back in about forty minutes. I'll fix you the money. We left the factory at 20 minutes after one and I went over to the beer saloon and took the cigarettes out of the box and there was some money in it, two paper dollars and two silver quarters and I took a drink and laid down across the bed and went to sleep until half past six. That's the last time I saw Mr. Frank. Next I saw him on the fourth floor on Tuesday when I was sweeping. He bent over and whispered to me, "Now remember to keep your mouth shut."

JIM CONLEY, on cross examination, reiterated much that he first recited, pretty much in the same language except he fixed the time of meeting Frank as 10 o'clock, in front of Montag's office, Saturday morning! Under direct questions from Solicitor-General Dorsey, Conley elaborated upon Frank's alleged sexual habits, giving names and dates of occasions when he alleged he had seen Frank engaged in perverted sex practices with these women. He alleged that in July, 1912, and in October, 1912, there was a cot in the basement, which Frank and another man

used for immoral purposes. He said that the "lady I watched for, last July, was Miss Daisy Hopkins." He alleged that Miss Hopkins submitted to Frank in Frank's office and went to the basement with a companion of Frank's on several occasions; and that now and then there would be a party of two men and two women in Frank's office for immoral practices. Daisy Hopkins was put on the stand by the defense. She said she was married; that she had never gone to Frank's office on a Saturday or at any other time and that she had never gone into the basement of the pencil factory with any one. C. B. Dalton one of the men with whom Conley alleged he had seen her to go into the basement with, was put on the stand by the state. He swore that he had had intercourse with Daisy Hopkins at the factory on several occasions and otherwise corroborated Conley's testimony. His testimony was assailed by counsel for the defense on the ground that Dalton was a convicted thief. Defense counsel also placed witnesses on the stand who swore they would not believe Dalton on oath. Then, in succession, a great number of witnesses were placed on the stand by the defense, some black and the others white, who testified, simply, that they would not believe Conley on oath.

A. N. HOLLOWAY, day watchman, Negro, employed five years at National Pencil factory: Duties that of guarding the factory against burglary, inspecting premises periodically for intruders or signs of fire, looking after elevators and running elevator during work days; arrived at 6:30 a.m., Saturday morning, April 26; left by Frank's permission at 11:45 a.m.; did not see Conley the day of the murder; never did see Conley at the factory on a Saturday; if there is any cleaning to be done, it goes over from Friday until Monday; never saw any woman go to Frank's office on a Saturday except his wife, who sometimes helped him with secretarial work, his stenographer and other employees who belonged there; never saw Daisy Hopkins at the factory at any time; have been at factory every Saturday since June last year; Conley was never at factory on Saturday; never did see Conley watch the door downstairs or give signals to Mr. Frank or Mr. Frank give signals to him; would have seen them if they did because I had to watch the door; locked the elevator Friday night but forgot to lock it Saturday morning when I left.

J. ARTHUR WHITE, carpenter: Employed on the fourth floor of the pencil factory from nine o'clock Saturady morning, April 26, until three o'clock that afternoon; in company with Harry Denham; the elevator was not run at any time, between 9 a.m., and 3 p.m., on Saturday; would have known it if elevator had been used, because the pulley wheels and other operative machinery of the elevator is on the fourth, or top, floor and uncovered and there is a great clanking of this machinery when the elevator is in operation; heard no screams or cries at any time, but that is natural enough because he and Denham were on the fourth floor and engaged much of the time in hammering and sawing. Never saw Conley.

HARRY DENHAM, carpenter, working with White: Corroborated testimony of White; did not hear elevator; would have heard it, if it had been run at any time he was on the floor in the building. Did not see Conley; saw Holloway, Darnley, Frank, Mrs. White; corroborated Mrs. White's and Frank's testimony about the time Frank came to the fourth floor to notify them he was leaving for lunch.

RUTH ROBINSON, DEWEY HEWELL, W. E. TURNER and J. M. GANTT: All testified that Frank was on intimate terms with Mary Phagan and called her by her first name.

GRACE HICKS; employed at the National Pencil factory five years: worked at machine alongside of Mary Phagan: in five years Mr. Frank spoke to me only three times; never heard Mr. Frank speak to Mary Phagan or Mary speak to him.

LEO M. FRANK, statement to the jury, under oath: Related the facts of his birth, education, marriage, connection with the National Pencil Company and that he arrived at his office, on Saturday morning, April 26, at about 8:30; "Alonzo Mann, the office boy, and Holloway,

the day watchman, were on duty when I came in; conversed with Mr. Darley and Mr. Wade Campbell, inspector of the factory, in my office, when they came in about 9; Miss Mattie Smith came in while I was talking with them at about 9:15 and asked for her pay envelope and for that of her sister-in-law and I went to the safe, unlocked it, and got out the package of envelopes which Mr. Schiff had given me the evening before and the records for the previous day, and I put them in my cash box where I would have them handy.

"I was at work on the invoices when I was interrupted by Mr. Lyons, superintendent of Montag Brothers; went over to Montag's, after Mr. Lyons had left, Mr. Darley left with me at about 9:30 or 9:40; stopped at Hunter and Forsyth streets where we each had a drink at Cruikshank's soda fountain; bought a package of Favorite cigarettes and lit one; went to Montag's office, arriving there about 10; asked Miss Hattie Hall, the company stenographer, to come to my office; to help me with work; spoke with the Messrs. Montag, Matthews, Cross and Harry Gotheimer, sales manager of the National Pencil Company; returned to the office alone at 11:05; saw Mr. Holloway there and told him he could go as soon as he got ready and he told me he had some work to do for Harry Denham and Arthur White. I went into the office and found Miss Hattie Hall who had preceded me, and another woman whom she introduced me to as Mrs. Arthur White. Mrs. White said she wanted my permission to see her husband. I told the office boy to call up to Mr. Schiff and find out when he was coming down. The answer was that Mr. Schiff * would be right down. About this time Mrs. Emma Clark Freeman and Miss Corinthia Hall, two of the girls who worked on the fourth floor, came in and asked permission to go upstairs and get Mrs. Freeman's coat, which I readily gave and at the same time told them to tell Mr. White that his wife was downstairs. A short time after that two gentlemen came in, one of them a Mr. Graham and the other the father of a boy by the name of Eddie Burdette. These two boys had gotten into trouble during the noon recess the day before and were down to police headquarters and didn't get their pay envelopes the night before. I gave the envelopes to the fathers and chatted with them at some length.

"Just before they left the office, Mrs. Freeman and Miss Hall came into my office and asked permission to use the telephone. Mrs. Freeman and Miss Hall left the office, as near as may be at a quarter of twelve and I went over my letters and signed them and transmitted some orders. There were in the building, then, Arthur White and Harry Denham and Mr. White's wife on the top floor. From ten to fifteen minutes after Mrs. Freeman and Miss Hall left, this little girl whom I afterwards found to be Mary Phagan entered my office and asked for her pay envelope. I asked her number and she told me. I went to the cash box and took out her envelope and handed it to her, identifying her envelope by number. She left my office and apparently had got as far as the door leading to the outer office when she evidently stopped and asked me if the metal had arrived and I told her no. She continued on her way and I heard her footsteps as she went away. A few minutes after she left me I had an impression of a female voice saying something. I don't know which way it came from; it just passed away and I had that impression. This little girl evidently had worked in the metal department and had been laid off owing to the fact that some metal that had been ordered had not arrived at the factory. Hence the question. I only recognized

---

* The introduction of Schiff's name here and further along in the narrative is curious. It is also ambiguous. When Frank said he told the office boy to "call up to Mr. Schiff" did he mean that he told the boy to phone Schiff at his house or phone Schiff in some part of the building? And when he says he told Quinn that Schiff had "not come down yet" did he mean downstairs or down from his home? If he meant that Schiff was upstairs, he does not account for Schiff's ever having left the building. He could not be cross-examined. The reason for his introducing Schiff's name at this point remains an enigma.

the little girl from having seen her around the plant and did not know her name, simply identifying her envelope from her having called her number to me.

"She had left the plant hardly five minutes when Lennie Quinn, foreman of the plant, came in and told me he couldn't keep away from the factory even on a holiday. I smiled and kept working. He asked me if Mr. Schiff had come down and I told him he had not and he turned around and left. I continued working until I looked at my watch and noticed it was a quarter to one. I called my home on the telephone, for I knew my wife and my mother-in-law, were going to a matinee and I wanted to know when they would have lunch. Mineola answered they would have lunch immediately and for me to come right home. I gathered up my papers and went upstairs to see the boys on the top floor. I saw Arthur White and Harry Denham and Mrs. White and asked them when they were going to be ready to go and they said they had enough work to keep them busy several hours. I noticed that they had laid out some work to do and I had to see what work they had done and were going to do. I asked Mrs. White if she was going or I would be obliged to lock up the front door and she said she would go right down. I went down and gathered up my papers and locked my desk and washed my hands and put on my hat and coat and locked the inner door of my office and locked the street door and started to go home.

"Now gentlemen, to the best of my recollection, from the time the whistle blew for 12 o'clock * until a quarter to one, when I went upstairs and spoke to Arthur White and Harry Denham, to the best of my recollection, I did not stir out of my inner office, but it is possible that to answer a call of nature or to urinate I may have gone to the toilet. Those are things a man does unconsciously and cannot tell how many times nor when. In my office with the safe door open it is impossible for me to see out but it is also impossible for people to see me inside.

"I arrived home at 1:20 and found my wife and mother-in-law eating their dinner and my father-in-law just sitting down. I called up my brother-in-law to tell him that on account of the work I had yet to finish I would be unable to go with him to the ball game. After a few minutes my wife and mother-in-law finished dinner and left and told me good-bye. My father-in-law and I finished dinner, which Mineola served us. After dinner I lighted a cigarette and laid down a few minutes, got up and walked to Georgia Street to get the street car. I saw the Washington Street car coming and ran to get on it. In the car I talked to Mr. Loeb on the way to town. At the intersection of Washington and Hunter Streets in front of the fire engine house there were a couple of cars stalled ahead of us and other cars were waiting to see the memorial day parade. After I stood there five minutes I told Mr. Loeb I was going to get out and go on as I had work to do. I went down Hunter Street. When I got to the corner of Whitehall and Hunter Streets the parade had started to come around there and I had to stay there fifteen or twenty minutes and see it pass. Then I went down to Jacobs and purchased twenty-five cents worth of cigars. Then I went down Forsyth street to the factory and unlocked the door and left it open and went up to tell the boys I had come back. They were preparing to leave and I went inside my office and opened the safe and opened my desk and hung up my coat and hat and started to work on the rest of the financial report. Mr. Schiff had not come down and there was additional work for me to do.

"I heard the bell ring on the time clock and Arthur White and Harry Denham came into my office and Arthur White borrowed two dollars from me in advance on his wages. I had gone to work on my re-

* Dorsey called attention to this error in his summation but did not dwell on it except to cast reflection upon the veracity of Frank's rather minutely detailed narrative. The noon whistles did not blow that day; it was a holiday; all factories were closed.

port when I happened to go out to the lavatory and on my return I noticed Newt Lee, the night watchman, coming towards the head of the stairs, coming towards me. I looked at the clock and remembered I had told him the night before to come back at four for I expected to go to the baseball game. Newt Lee came along and greeted me and offered me a banana, which I declined and told him there was no way of letting him know sooner that I would be there at work and had changed my mind about going to the ball game. I told him he could go if he wanted to or could amuse himself in any way he saw fit for an hour and a half and to be back at six? He went downstairs and I returned to my office.

"I finished this work at about 5 to 6, took the used slips out of the time clock and replaced them with new ones. The slips I put on were marked April 28. As I was putting in the slips I saw Newt Lee coming up the stairs and looking at the clock. It was near six. I finished putting in the slips and was washing my hands when I heard Lee ringing the bell on the clock registering the first punch and he went downstairs to wait my departure. At the front door I saw J. M. Gantt whom I had to let go two weeks previously. Lee said he wanted to go back into the factory and had refused him permission because he understood he was to let no one in after six o'clock, except on contrary orders from Mr. Darley or myself. I asked him what he wanted. He said he had left a pair of black and a pair of tan shoes in the shipping room. I told Newt Lee it would be all right to pass Gantt in. Gantt went in and Newt Lee closed the door and locked it.

"I then walked up Forsyth Street, posted two letters, got a drink at the soda fountain, bought my wife a box of candy and arrived home at 6:25. I read the papers until 6:30, then called the factory and could get no answer. I called again at seven and asked if Mr. Gantt had gone and Lee said yes. I asked if everything was all right at the factory and he said it was. I had supper and phoned my cousin, Mr. Ursenbach and asked him if he would be home that evening, but he said no, he had another appointment. So I stayed home and read the newspapers. I saw Mineola pass out about eight. In the evening Mr. and Mrs. Emil Selig, my parents-in law, had company, Mr. and Mrs. Morris Goldstein, Mr. and Mrs. M. Marcus, Mrs. A. E. Marcus and Mrs. Ike Strauss. I sat reading until 10:30, had a bath and went to bed."

Frank continued his statement, in which he related subsequent events. He told how, on Monday, he had stripped bare at police headquarter, while the police examined his body for any marks or bruises, and how he had taken the police to his home at his own suggestion got out his laundry bag and dumped the contents on a bed, so that they might examine his shirts and underclothing for presence of blood or other incriminating evidence. He said that Detective Scott had shown him a piece of cloth and had asked him if he had a shirt of that material and he had told Scott that he did not. It was a piece from the shirt found in Newt Lee's refuse barrel.

The newspapers made much point of the fact that Mrs. Frank did not visit her husband while he was in custody. He explained that by saying that he sent a request for her not to come; he did not want her to see him in jail and watch him undergo the questions of the police. He was also criticized for not visiting Newt Lee in his cell and he said that he had gone there once and could not bear to watch the way the police tortured the poor Negro trying to wring something out of him. He closed his statement by reaffirming his innocence and by saying that if he had to pay the penalty of death for something he did not do, his own life would not matter, but the shame would be on the state of Georgia.

Assistant Solicitor General Hooper delivered the first summation, outlining the state's contention on the basis of the facts revealed. He was followed by Luther Rosser for the defense. Luther Arnold, for the defense, took up where Rosser left off and assailed the nature of the

state's evidence and the character of some of the witnesses introduced by the state, in the light of testimony of other witnesses who swore they would not believe these state witnesses on oath. Solicitor General Hugh A. Dorsey delivered the final summation, part of it on August 25 and part on the morning of August 26. Dorsey's summation laid much less stress on Conley's testimony than upon these factors:

(1) Frank's assertion to the police and at the undertaking establishment that he could not identify the dead girl by name, whereas numerous witnesses among the factory's employes testified that Frank called her "Mary" and showed her marked attention.

(2) The testimony of Helen Ferguson, a factory employe, that Mary Phagan had asked her to get her (Mary's) pay on Friday, when she (Helen) called for her own, and that Frank had refused to give Mary's to Helen, saying that Mary would have to call for it herself and that he would be in the office all day Saturday and Mary could call for it then. It was testified that Frank did not make this requirement of others, that Mattie Smith had collected her sister's pay and that two young sons of factory workmen had falled for and got their fathers' pay from Frank. By this, the state sought to establish that Frank had known on Friday that Mary would be coming, in person, for her pay on Saturday and that he had planned it that way, because he had been making amorous advances to Mary.

(3) The discrepancy between Frank's statement to the police and his later statement to the jury concerning the words he said to Mary Phagan when she called for her pay that Saturday morning. Mary had worked only part of the week, because the supply of the tin used for affixing erasers to pencils at her machine had run out. To the police, Frank had said that, in reply to Mary's inquiry whether the new supply of the metal had arrived or not, he had answered: "I don't know." Later he maintained he had replied with a simple "No." It was the State's contention that his first statement was correct and that his answer to Mary gave him and excuse to follow her into the machine room when she left his office.

(4) The testimony of Monteen Stover that she had gone to Frank's office on Saturday and had been there from about 12:05 p.m. to about 12:12 p.m. Monteen's testimony was corroborated by witnesses, including the street car conductor on whose car she rode to the office and by references to the street car company's schedules and the calculated time it took Monteen to leave the street-car and arrive at Frank's office. Monteen testified that after waiting alone in Frank's office for about five minutes she concluded he had gone for the day and that she left without her pay. Frank never knew that she had been there. The state contended that while Frank was out of the office during Monteen's stay there, he was in the ladies' washroom at the end of the machine room on the second floor, into which he had followed Mary. Frank maintained, even in his final statement to the jury, that he had not left his desk between 12 noon and 12:45.

(5) The testimony of Dalton and various factory workers as to Frank's character and reputation for lasciviousness.

Dorsey's hypothesis concerning the crime differed in some important essentials from that of his assistant, Hooper; and also Dorsey departed from the record time after time without any challenge from attorneys for the defense. It would almost seem as if he were giving the defense an opportunity to break down his own case, so frequently did he cite, as facts, occurrences and the time of them which were not according to the evidence.

Assistant Solicitor Hooper placed the time of the murder at between 12:05 and 12:20. According to him it occurred in the machine room on the second floor. He contended that Frank hit Mary a blow over the left eye, when she repulsed him, knocking her down; that in her fall she received the gash in the back of her head, which rendered her unconscious; that, realizing that attempted rape is a lynching matter in the

South, Frank, in a panic of fear, strangled the girl with a cord; that he left the body in the machine room and locked the door and returned to his office deciding what to do with the body; that he was seen there by Mrs. White at 12:30 and probably by Quinn about five minutes earlier; that after Quinn left, he made an effort to clear the building of all except himself and Conley, going up to the fourth floor for that purpose at 12:45; that he summoned Conley after Mrs. White left the building and that the removal of the body occurred between 12:50 and 1:20. This coincided with Conley's story.

But Dorsey's hypothesis was that Mary neved did get her pay envelope; that she asked if the metal had come, when she first came into Frank's office, and that Frank followed her into the metal room when she went to look; that Frank killed and raped Mary in the women's rest room, went upstairs immediately and got Mrs. White out of the building by 12:35. This hypothesis met the defense's contention that Conley's discovery that the girl was dead, his writing the notes and taking the body to the basement could not have occurred within the 34 minutes of Conley's story. But there was no evidence to support this hypothesis. The testimony of a state's witness, Mrs. White, denied it. Mrs. White testified that she went up to the fourth floor at 12:30, seeing Frank standing outside of his office in his shirt sleeves on her way up. Dorsey further said, "At 12:30 Mrs. White says she went down and saw Conley sitting on some boxes on the first floor on her way out." She said nothing of the sort; she said she went *up* at 12:30 and came *down* "a little before one" and saw a Negro on the first floor but could not identify him as Conley. Counsel for defense did not challenge him on these important misstatements of evidence; but here the reason is clear; in his statement to the police Frank did not mention having seen Mrs. White at all until he went up to the fourth floor, and in his statement to the jury, he mentions having seen her at 11:30 but not again until after 12:45. The defense wished to ignore Mrs. White's testimony about seeing Frank outside his office at 12:30.

I think the defense seriously erred in not eliciting from White and Denham (both of whom were defense witnesses, although Mrs. White was a witness for the state) testimony concerning the time she went upstairs. She said she went upstairs at 11:30, came down, went shopping, came back and went upstairs again at 12:30; but there was no corroborative evidence to support this statement. There was no evidence to support Quinn's statement that he had been in Frank's office from 12:25 to 12:30 either; and, moreover, in his original statement to the police Frank said nothing about having seen Quinn that day and yet in his statement to the jury he made considerable point of Quinn's visit, saying that Quinn said he couldn't stay away from the factory even on a holiday.

Quinn and Mrs. White conflicted in their testimony. Both said they saw Frank at 12:30, Mrs. White when she was coming in and Quinn as he was leaving Frank's office; but neither saw the other and one testified she saw Frank standing outside his office whereas the other testified he saw Frank at his desk. Quinn's testimony was considered valuable to the defense, of course, as placing Quinn in Frank's office so soon after Mary Phagan's arrival—too soon, it would appear, for the commission of the crime by Frank in accordance with the state's hypothesis.

Dorsey attacked Quinn's testimony as prejury and denied that Quinn was in the factory that day; no one testified to having seen Quinn at the factory that day except Conley and, in none of his statements to the police did Conley say anything about Quinn. Mrs. Freeman and Miss Hall testified to having seen Quinn at the Busy Bee restaurant and to having heard him say he had just been to Frank's office, but they did not see him at the office. They were defense witnesses and perhaps their memory a month after the murder had been confused about what they heard Quinn say.

Was the defense afraid to question White and Denham about the

time, or times, Mrs. White came up to the fourth floor? Were they afraid that they would testify that she came up at 11:30 and stayed until about 12:50? If so, the defense had nothing to be afraid of, because Dorsey practically threw the case in their lap by putting the time of Mary's arrival as at 12:20 (which was certainly *after* Monteen Stover's arrival and departure) and of Mrs. White's departure from the building as at 12:30! This was to contend that Frank followed Mary into the machine room, assaulted and raped her, went into the hallway and got a cord, went back and strangled her, washed his hands, arranged his clothing, locked the machine room door, walked up to the fourth floor and got Mrs. White out of the building, all in the space of ten minutes!

Of course defense counsel could not anticipate that Dorsey would so argue as to strain credibility covering his own case in his summation. And Dorsey's summation was the last statement of counsel to the jury. But, when Dorsey went outside the record to make such statements as facts, defense counsel could have challenged him on the record. And, even if the defense had to produce the state's own testimony, it would have certainly tended to show that the commission of the crime could not have occurred within the time allowed by the state, in the manner described by Dorsey.

Dorsey again went very seriously outside the record in saying that blood was found on the girl's drawers and that there were other indications of rape. There was no testimony offered by the state to justify these assertions; indeed the testimony was to the contrary. Moreover, it was Conley's testimony and Hooper's contention that Frank was not capable of normal sexual relations.

By his failure to challenge Dorsey for going outside the record on time-element, the defense enabled Dorsey to go on and contend that, as soon as Mrs. White was gone, that is, shortly after 12:30, Frank called Conley upstairs and, that the disposal of the body was carried out, along with the writing of the notes, within the next thirty or forty minutes, thereby meeting the testimony that placed Frank out of the factory and home by 1:20.

But reliable testimony of newspapermen and police, who conducted experiments, showed that the body could not have been disposed of in the manner stated within less than 50 minutes. It would seem here that Dorsey again was arguing against his own case, in effect. Nor did he so state the case as to get Frank back at the office before 3 o'clock. The time element was important to the defense, and the defense should have taken greater advantage of it. For, if Frank told Conley to be back within 45 minutes to burn the body and had locked the door, it sems unlikely that he himself would take one hour and fifty minutes for lunch.

It would almost seem as if Dorsey, without being thoroughly convinced of it himself, was trying to make out that Frank, without having either rape or murder in his heart, had made an indecent proposal to Mary; that he had struck her when she resented it; that she had been knocked unconscious in her fall; and that, in panic, he had strangled her. The state had introduced ten girls and women, all employees at the factory, to testify that Frank's reputation for "lasciviousness" was bad; testimony concerning two women, by name, was given, with whom it was alleged that Frank had immoral relations at the factory; one of these women denied that she had ever been with Frank at any time at the office, but witnesses gave corroborative testimony that Frank had several times gone with Rebecca Carson into the ladies' dressing room for immoral purposes and that, one one occasion, Frank went into the room while some girls were undressing.

Now, in addition to devoting the major portion of his summation to what reads like a prosecution of Conley (who was not on trial) rather than like a defense of Frank, Reuben Arnold, in effect, not only conceded to the prosecution that his client was. or had been, given to immoral conduct, but apologized for him! He said, at one point, "Hooper says there were bad things going on in the pencil factory and that it is

natural for men to cast about for girls in such an environment. We are not trying this case on whether or not you and I and Frank have been perfect in the past. This is a case of murder. Let him who is without sin cast the first stone."

There can be no doubt that the famous Reuben Arnold, who had triumphed over so many prosecutors in criminal cases, knew what he was about, or thought he knew, when he made a statement like that. But to me it is a little like the statement of a man who held back a mob, bent upon lynching, while he made an address upholding the principle of fair trial. The man ended by saying, "I am against your taking the law into your own hands. . . . But use your own judgment." More than 100 witnesses had testified to Frank's good character and reputation, including girls who worked alongside of Mary Phagan; they testified that Frank rarely spoke to any of the girls in the machine room and then only in impersonal manner, not by name, and only to give instructions. Literally scores of witnesses were introduced to refute the testimony of Conley and Dalton that Frank was given to immoral practices at the factory; their testimony was that Conley's and Dalton's reputation for veracity was bad.

Yet Arnold, in effect, conceded that his client had had immoral relations with other girl workers at the factory! This concession was bound to carry considerable emotional weight, if only subconsciously, with a Southern jury, whose traditions (however frequently dishonored in fact) idealize womanhood and constitute all males the protectors of womanhood; and the charge here conceded by the defendant's own attorney was that the superintendent of a factory had abused his position and his power to give or withhold jobs in order to gratify his lust with 'teen age factory girls.

Again, it was very unfortunate (for the defense, as well as for the orderly process of law), I think, that Arnold introduced the racial or religious issue into his summation. It had not come up during the examination of witnesses; it was not interjected into the trial at all until Arnold made the statement that Frank would not have been indicted at all except for his religion. There was nothing that had been said or intimated during the trial to justify such an assertion. Moreover, it came with very bad grace from Arnold who, throughout his summation, almost constantly referred to Conley as a "dirty, black nigger," "lying nigger scoundrel," and "lousy nigger." It forced Dorsey into the position of saying what is manifestly true, namely, that the job of the police and of himself would have been much easier if evidence had been procured justifying an indictment of Conley for the murder instead of Frank, inasmuch as Conley was a penniless, friendless, ignorant and shiftless Negro, often drunk and disorderly and with a chain-gang record, whereas Frank was a man of means and standing in the community, with wealthy and powerful friends. It also forced Dorsey into the position of denying Arnold's insinuation and of paying an eloquent tribute to Frank's ancestors, saying they were civilized for ages while his own ancestors were still eating human flesh and that they had produced the religion professed by most of the peoples of the western world, including those in the courtroom.

Arnold's injection of religion into the case was very unfortunate, I think; for it impugned the motives and the integrity of the police, of the coroner's jury, of the grand jury (of which five members were of Frank's religious faith), of the prosecutor and of the court itself. It was, in effect, a challenge to the jury to free his client—or otherwise bear odium of religious prejudice sufficiently strong to send an innocent man to the gallows. A jury deeply conscious of its responsibility and priding itself upon the purity of its motives and upon its ability to judge the evidence fairly and without prejudice—which every juryman must feel as a point of honor, whether that feeling is justified or not—would, I think, resent Arnold's wholesale and gratuitious insult to the authorities of Atlanta. Psychhlogically it was, I think, an extremely dubious line of attack. I

believe that Arnold believed he was acting in his client's best interests but that, unconsciously, he was swayed by intimations of his client's guilt. I believe he was so certain his client would be found guilty that he was concentrated upon the strategy of appeal and thereby was unaware of the opportunities Dorsey offered him to demolish the state's contention.

It seems likely to me that, even in his strategy of appeal, Arnold was unconsciously led into error. At the conclusion of the trial and before the judge had charged the jury, Arnold asked that the judge retire the jury because he had an application to make. When the jury was retired, Arnold's application was not for a directed verdict or for a retrial on the ground that insufficient evidence had been produced to warrant the jury's consideration but for a writ of error. His contention, thus was not that the evidence against the defendant was meager and inconclusive but that conduct of the trial had been unfair and prejudicial to the defendant. Whereas he had hitherto appeared to be prosecuting one of the state's chief witnesses for murder rather than defending his client of the charge, he was now accusing the court of improper conduct of the trial instead of accusing the state of having produced insufficient evidence.

Judge Roan considered the five points of alleged error while the jury was kept waiting. He called the bailiff who had been in charge of the jury to testify concerning the allegations and he himself the sheriff and the bailiff submitted to cross-examination. Thereupon he formally overruled the motion but told counsel for defense to prepare briefs and submit witnesses and apply for a writ of error, which he would consider after he had charged the jury and after the jury had performed its duty.

This was on August 25. In the application for a writ of error to the Georgia Supreme Court this report of the incident was submitted:

MR. ARNOLD asked the jury be retired as he had an application he did not desire the jury should hear.

The Court acquiesced and the jury retired.

MR. ARNOLD: I make a motion for a mistrial and I wish to name the facts on which to make it. We wish to prove every fact included in this motion unless the court already knows it. We base our motion on the following facts:

(1) That counsel for defense requested that the court room be cleared.

(2) That the audience applauded when he court refused to rule out evidence relating to women.

(3) That on Friday, August 22, when the court had adjourned for the day, when the jury was 200 feet north of the courthouse on South Pryor Street a large crowd cheered the solicitor, crying "Hooray for Dorsey!"

(4) On August 23, when the jury was only 100 feet away, in the German cafe, a crowd gathered in front of the court house and cheered Solicitor Dorsey when he came out.

(5) That on the last day of the trial a large crowd of women had taken seats before the court opened; that when Solicitor Dorsey entered the courtroom he was cheered; that the jury in a room only 20 feet away must have heard this cheer.

(6) That these demonstrations tended to coerce and intimidate the jury and influence the jury's verdict.

Arnold added, "The behavior of the spectators throughout this trial has been disgraceful."

Judge Roan called the bailiff and the sheriff and interrogated them on the points charged by Arnold. Both denied that they heard any cheers for Dorsey, or heard Dorsey's name mentioned by spectators at the trial, or heard applause for Dorsey as he entered the courtroom that corning. Judge Roan added to this testimony by saying he heard some noise but said it was the sort of noise inseparable from any trial that aroused any public curiosity and he also declared that he did not hear any mention of Dorsey's name.

Nevertheless he accepted application for a writ of error to be considered after the trial was concluded. Then he ordered the court room cleared. (Incidentally, Justice Holmes of the United States Supreme Court, was misinformed on this, as well as upon other points, in his dissenting opinion, written nearly two years after the trial, when the Supreme Court, in full bench, dismissed the appeal for a new trial for the third time. He wrote: "When the verdict was rendered and before more than one of the jurymen had been polled there was such a roar of of applause that the polling could not go on until order was restored."

The courtroom had been cleared on the last day of the trial. A crowd had gathered in the street. They cheered the verdict but they did not know of the verdict until the poll was over. Moreover, even if it had occurred in court, which it hadn't in the case, applause of spectators is usual after every trial, whether the verdict is for or against the defendant; it was terrific when Lizzie Borden was found not guilty; it was terrific when Hauptmann was found guilty; it was terrific when the Mrs. Hall was cleared of the charges of murdering her husband and his paramour; and it was terrific when Ruth Snyder and Judd Grey were found guilty. And applause *after a verdict has been rendered* cannot be properly said to have coerced or intimidated a jury while it was still considering a verdict.

Judge Roan charged the jury in a little masterpiece of impartial judicial instruction of a jury as to its function and obligation.

The jury retired at 12:45 p.m., August 25, 1913 and brought in a verdict of Guilty at 4:55 p.m. Meanwhile, with the consent of counsel for defense, the defendant was kept guarded in his cell and was not present in court to hear the pronouncement. This action was taken as a measure of protecting the defendant's person *in case a verdict of not guilty or a disagreement ensued.* It was agreed by the court, defense counsel and the state, that some danger of violence lay in acquittal or disagreement. This was alleged to be a denial of the prisoner's constitutional rights, in the appeal, but all courts of appeal held that the allegation was not justified in that the prisoner's absence from the courtroom was by consent of his counsel.

Almost immediately after the jury rendered its verdict, the defense counsel, Arnold and Rosser, gave out the following statement to the press.

"We deem it not amiss to make a short statement, as the attorneys for Leo M. Frank, to the public. The trial which has just occurred and which has resulted in Mr. Frank's conviction, was a farce and not in any way a trial. In saying this we do not make the least criticism of Judge Roan, who presided. Judge Roaon is one of the best men in Georgia and is an able and conscientious judge. The temper of the public mind was such that it invaded the court room and invaded the streets and made itself manifest at every turn the jury made; and it was just as impossible for this jury to escape the effects of public feeling as if they had been turned loose and had been permitted to mingle with the people. In doing this we are making no criticism of the jury. They were only men and unconsciously this prejudice rendered any other verdict impossible. It would have required a jury of stoics, a jury of Spartans, to have withstood the situation. The time ought to come when this man will get a fair trial and we profoundly believe that it will. The final judgment of the American people is a fair one. It is sometimes delayed in coming but it comes. We entered this case with the profound conviction of Mr. Frank's innocence. The result has not changed our opinion. Every step of the trial has intensified and fortified our profound conviction of his innocence."

This statement was an unusual one for defense attorneys to make after the conclusion of a case they have temporarily lost. For much less cause editors and lawyers have been held in contempt of court, fined and jailed. It should not be taken too seriously by the reader for the simple reason that it was obviously designed to influence any future jury

that might be confronted with the case and to influence the judges who would be called upon to review the motions for appeal. The statement is cited here in connection with the six points of the defense counsel's contention for a new trial, because later allegations of improper and prejudicial procedure during the trial grew more and more exaggerated by the year.

If there had been more grounds for complaint against the conduct of the trial or more evidence of efforts to coerce or intimidate the jury than those named in the six points of contention of mistrial, the attorneys for the defense would have been neglectful of their client's interest if they had failed to cite these grounds. Statements by commentators on the trial, such as "mobs surged in and out of the courtroom, intimidating both witnesses and the jury," that "almost every man in the audience reached for his gun," when Mary Phagan's mother screamed and burst into tears on being shown the garments of the dead girl; and that "the judge permitted mob rule," were utterly without foundation.

The trial, indeed, excited comparatively little attention for a murder trial. It was attended by none of the courtroom antics and demonstrations of morbid curiosity such as figured at the Hauptmann, Hall-Mills and Snyder-Grey murder trials. The crowd waiting outside of the courtroom for the jury's verdict was comparatively small for a sensational murder case.

But, during the months to follow, the case, which did not, intrinsically, differ from any other trial for rape and murder became first a national and then an international *cause celebre,* reminiscent of the Dreyfus affair in the public consciousness. During the investigation of the murder and the trial itself the case had excited no attention whatever in Northern newspapers. News in New York newspapers during that period for instance, was concerned with the war clouds arising from the German Kaiser's martial antics in Europe, Harry Thaw's escape from Mattewan, the impeachment of Governor Sulzer, the anti-alien land ownership law of California and murders nearer home. Very little attention was paid the case even in the South, except in the state of Georgia, until nearly a year after the trial and conviction.

What had started as a paid advertisement in Atlanta newspapers during the trial became, after a year, during which Frank's case was being appealed from higher court to higher court, a tremendous emotional issue, arousing fanatics on both sides of the issue to a hysterical pitch. It brought forth all the sleeping animosities between the North and the South that had been quiescent, more or less, since the Civil War. Northern newspapers editorially denounced the South and the State of Georgia in particular and rabble-rousers in the South responded with scurrilous vituperation against the North. Little, if any attention, was paid to the evidence upon which Frank had been convicted. It was an emotional debauch which, as Mark Sullivan wrote in his history of Our Times, Vol. 5: "The Frank case and the Becker case were (to the 1910's) what the murders of Stanford White and Governor Steunenberg were to the 1900's and the Bobby Franks and Hall-Mills murders were to the 1920's."

The core of this emotional whirlwind came about during the trial. Friends of Frank in a religious society, of which Frank was president, drew up an advertisement which argued that Frank was being prosecuted not because he was guilty but because of his religious faith.

When the advertisment was shown to Joseph Dewey Gortatowsky, then managing editor of the Atlanta *Constitution,* the most influential newspaper in the South, and himself an orthodox member of Frank's religious faith, Mr. Gortatowsky strongly advised the committee not to publish the advertisement. He reminded them that five members of the grand jury which had indicted Frank were of Frank's own religious faith. He said that they had no evidence upon which to base their assertion and that no question of race or religion had been raised by

the prosecution and that it would have made Solicitor-General Dorsey's job much easier if the grand jury had indicted Conley instead of Frank because Conley was not only a Negro and thus disfranchised and declassed, but a Negro with a police record, dissolute, shiftless and without friends or money. He said the advertisement would inflame morons and create prejudice where no prejudice existed, inasmuch as it accused a reputable and respectable state official, Hugh M. Dorsey, of gross dereliction of duty, and that the advertisement, moreover, attempted to try the case and free Frank before the jury had heard all the evidence. Mr. Gortatowsky intimated that the advertisement might prove inimical to their friend's interest.

But the committee of Frank's friends went ahead and inserted the advertisement anyhow. The highest priced and the most famous criminal lawyers in Atlanta, and perhaps in all the South, Rosser & Arnold, had been retained and Frank was a man of very limited means. The original committee of Frank's co-religionists became the Leo M. Frank Defense Fund Committee of which Herbert Haas, attorney for the National Pencil Company, was chairman. This committee, after Frank's conviction, began to solicit funds on a national and international scale, alleging that Frank was a martyr condemned by religious prejudice.

Charges of racial or religious prejudice is something no sane and just man can face with equanimity; he is ready with all his means and resources, however limited, to fight it. Therefore contributions from Catholics, Protestants, Jews, atheists and agnostics began to pour in to the Frank Defense Fund Committee. Senator Borah made political capital of it; prominent men in many walks of life announced that Frank was being made a martyr to prejudice. Mass meetings were organized in remote centers where nothing conclusive could be known about the case; "Georgia justice" was denounced, and contributions were collected. Contributions poured in from Honolulu, Bombay, Oshkosh and Paterson, New Jersey as well as from other cities, small and large, all over the globe. More than $250,000 were said to have been collected.

In May, 1914, more than a year after the murder, William J. Burns, head of the famous William J. Burns Detective Agency, entered the case as an investigator for the Frank Defense Fund Committee. He entered it at an inauspicious moment. While the investigations concerning Mary Phagan's death were being conducted, Frank had discharged Herbert Scott, manager of the Atlanta branch of the Pinkerton National Detective Agency, whom he had engaged on the day after the murder to track down the criminal responsible for Mary's death.

The reason for Frank's dismissal of Scott was because Scott was doing what the state laws of Georgia require a private detective agency to do—namely, to co-operate with the police and give them full reports on the results of the agency's investigations.

After a few days of investigation in Atlanta Detective Burns declared, in a statement to the press, that it was obvious that Frank was not guilty and that Conley was. He had secured affidavits, he alleged, from witnesses who declared they had been coerced into making false affidavits against Frank. He declined to share the results of his investigations with the Atlanta police about whose competence he was grossly insulting.

The police thereupon closed the Burns Detective Agency in Atlanta and prohibited him and his operatives from continuing work in the city. A city ordinance in Atlanta gave them the right to do this because, as stated before, the ordinance requires private detectives to co-operate with the police. They revoked the Burns license.

Burns thereupon visited various cities in the North in behalf of the Frank Defense Fund Committee, where he gave to the press his version of the murder, which was this:

"Conley, drunken and hard up, was hiding behind the boxes at the foot of the stairway when Mary Phagan, who had drawn her pitiful little wage, went down on her way out of the building. She had her money in her hand. She decided to go to the basement and leaned her parasol

against the wall before starting down the steps. Conley then struck her, not with the intention of killing her but of robbing her.

"After he had struck her, he heard some one call, as he confessed to Annie Maude (his paramour) and then pushed her (Mary) through a a square hole, a hatchway, nearby, which led from the first floor to the basement.

"It was this fall and not from the blow of any weapon that Mary Phagan received the great cut on her neck which killed her. Nothing in the factory would have inflicted just that wound save the sharp cornered log which lay at the foot of the ladder. Bruises on her body were such as would have been made by the ladder as she struck against it in the course of her fall."

Detective Burns' theory is simple and direct and it may have complete validity. Many hundreds of thousands of people at the time believed it. In Atlanta and elsewhere in the South, however, there were thousands who just as passionately believed that Detective Burns had concocted his theory a whole year after the event by huge subsidies of cash from the Frank Defense Fund and with very little consideration of the evidence offered at the trial.

At the instance of newspaperman William Randolph Hearst, New York Supreme Court Judge Clarence J. Shean went to Atlanta to study the records in the spring of 1914. His conclusion was "there is no legal evidence whatever upon which a reasonable hypothesis of Frank's guilt may be based."

Trial Judge Roan, who sentenced Frank to be hanged, stated (according to a newspaper interview with him) that he was not convinced by the evidence that Frank's guilt had been proved but that his function was not to dispute the verdict of the jurors but to instruct them in their duties and obligations and pronounce judgment according to their findings.

Ward Greene, now a Hearst executive, was a reporter who covered the trial for the Atlantic *Journal* and afterwards wrote a novel, *"Death in the Deep South,"* based on the case. Like other newsmen who covered the trial, he has never been able to form an opinion about Frank's guilt or innocence. All he can say is "I don't know."

5. HISTORY OF THE APPEALS

That Judge Roan was not hasty or ill-considered in his decisions is evident from the fact that he deliberated for more than two months before denying the motion for a new trial, on October 31, 1913.

The case was then carried to the Supreme Court of Georgia, which considered the testimony in the matter of the original charge of trial error and a digest of the trial, together with the summations and overruled the motion for a new trial in a decision handed down on February 17, 1914. Frank thereupon was re-sentenced to hang April 17.

On April 16, 1914, an extraordinary motion for new trial was filed in the Georgia Supreme Court, which delayed the execution of the sentence.

On November 14, the Supreme Court of Georgia denied a new trial.

November 18, the Supreme Court of Georgia refused a writ of error, holding that the evidence presented by defense did not show that the lower court had erred in conduct of the trial.

On November 23, Justice Lamar of the Supreme Court of the United States refused a writ of error.

On November 25, Justice Holmes of the Supreme Court of the United States also refused a writ of error.

On December 7, the full bench of the Supreme Court of the United States heard the petition and refused a writ of error.

On December 7, Frank was again sentenced to hang January 22, 1915.

On December 21, Judge W. T. Newman of the United States District Court of Georgia refused the defense a writ of habeas corpus.

On December 28, Justice Lamar of the United States Supreme Court granted an appeal and a certificate of reasonable doubt to the United States Supreme Court.

On April 19, 1915 the Supreme Court dismissed the appeal, Justice Hughes and Holmes dissenting. Justice Holmes, after enumerating the defense's allegations of hostility to the petitioner on the part of spectators at the trial (allegations which were exaggerated and not included in the original motion for a new trial) stated: "Upon allegations of this gravity the petition ought to be heard." The majority opinion held that the evidence of improper trial procedure was not sufficient or convincing enough to warrant the Supreme Federal Bench in passing adverse judgment on the State Supreme Court of Georgia.

On April 1915 the case went back to the Supreme Court of Fulton County, Atlanta, Georgia, in which it originated. Judge B. H. Hill had succeeded Judge Roan. He heard an extraordinary motion for a new trial and denied it on April 22. Frank again was sentenced to hang April 25. Execution was stayed by Governor John Slaton pending a report on the case by the Prison Commission of Georgia. The commission submitted a divided report to the governor on June 9.

On June 21, 1915, nine days before the expiration of his term of office, Governor Slaton commuted Frank's sentence to life imprisonment. A mob gathered before the governor's mansion after news of this action by the governor was announced. The state militia was called out and the mob was dispersed. Governor Slaton permitted himself this comment upon the demonstration of the mob:

"Every city has its riff-raff and Atlanta's mob is composed of men whose wives support them by running boarding houses, whose children are in the factories instead of in school and who loaf on corners talking about the inequalities of opportunity and the inequalities of the law in America."

Governor Slaton knew that his action meant his political death. Nevertheless, he said that as long as he had a reasonable doubt about the guilt of Frank, or of any other man, his conscience would not permit him to allow that man to be put to death if he could prevent it.

Things quieted down. Frank was incarcerated in the Georgia State Prison in Milledgeville. Then a month later a life termer in prison cut Frank's throat with a butcher's knife and Frank hung between life and death for six weeks. Then early in the morning of August 25, 1915 a mob, variously estimated at from fifteen to 150 persons, broke into the prison, disarmed the guards, held the warden captive, and kidnaped Frank. They took him to Marietta, a town in which Mary Phagan's body had been buried in the family lot. They hanged Frank to a pine tree near Mary's grave and, in a brutally drunken orgy, mutilated Frank's body before a few humane local citizens could reach and take it to an undertaking establishment in Atlanta.

This lawless and horrible action inflamed decent citizens everywhere and demand was made in Atlanta that the members of the mob be apprehended and brought to justice. But nothing ever came of the investigations or of official efforts to punish the criminals.

6. WHO MURDERED MARY PHAGAN?

I propose herewith to show that the conduct of the case, both by the prosecution and by the defense, was, on the basis of the evidence, curiously inept. After long and profound study of the summations of Solicitor Dorsey, for the state, and of Reuben Arnold, for the defense, I have been unable to disabuse my mind of the suspicion that Dorsey was animated by ineradicable feeling that the man he was called upon to prosecute *might be innocent*, and the Attorney Arnold was animated by an ineradicable feeling that the man he was defending *might be guilty*.

So long as Solicitor General Dorsey had no proof to bolster his

feeling, he could not do what Homer Cummings did later on—turn around and work to free the man whom he was called upon to prosecute. He was in duty bound to prosecute the case to the best of his ability, no matter what his private intimations might have been, unless he had actual and convincing proof of Frank's innocence, or that the evidence against Frank was false. Similarly, no matter what Mr. Arnold's secret intimations might have been, he was in duty bound to defend and protect his client with all the resources at his command.

I maintain that, on the basis of the evidence, it is impossible to determine who killed Mary Phagan; that Frank *may* have killed her; that Conley *may* have killed her; but that it is also equally plausible that neither one of them knew anything whatever about the murder and that Mary was killed by some person who was never even suspected of the crime.

For, when the evidence is minutely and carefully examined, it will be noted that there was no evidence produced whatever, beyond Conley's own word for it, that Conley was near the factory at any time on Saturday, April 26, 1913, the day of the murder. On the last day for the examination of witnesses, two witnesses showed up "providentially at the last hour" (as Assistant Solicitor General Hooper put it) who, the state believed, would testify that they had seen Conley at the factory on the morning of the murder. In fact, in his summation to the jury, Solicitor Hooper erroneously stated that these two witnesses had so testified. Hooper's statement on this point, curiously enough, was not challenged by either Rosser or Arnold, who could have objected that no such testimony was offered.

These two witnesses, O. Tillander and E. K. Graham merely testified that they saw Conley talking to Frank *in front of Montag's office* at about 9:30 on that Saturday morning. On cross-examination, they both denied they were positive that the Negro they saw talking to Frank was Conley; they merely thought it might be Conley, because the Negro "looked a little like Conley." And even if that identification had been certain, there were two significant points about it which, strangely enough, the defense overlooked: (1) The fact that Conley was seen talking to Frank several blocks away from the factory is no evidence that Conley went near the factory or to the factory, (2) if Conley was talking to Frank at 9:30 on that Saturday morning in front of Montag's, Conley"s testimony at the trial was a lie. In his fourth signed statement to the police Conley said he had met Frank in front of Montag's about 10 that morning and then had gone to the factory; but *in his testimony on the stand,* Conley changed his story in that regard and insisted that he had arrived at the factory at 8:30 a.m. at the same time Frank arrived there. Not one of the witnesses among the 300 testifying on both sides mentioned having seen Conley!

The main line of the argument of the defense, as well as of the prosecution, presumed the presence of Conley at the factory. The defense argument was that Conley murdered Mary Phagan and that Frank had nothing to do with it and knew nothing about it. This line of reasoning, I think, was a mistake. It is understandable; it enabled the defense to construct a plausible theory as to just how Mary met her death —that Conley, half-drunk and hard up, was waiting behind some boxes on the first floor for Mary to come down with her pay envelope, that he garroted her with a cord and dumped her body into the hatchway to the basement, causing thereby the gash and other wounds which were incurred as she fell down the hatchway striking her head against the iron ladder, that he took her handbag (which was never found), sneaked into the basement after Frank had gone, wrote the notes and escaped out of the basement door.

But Conley wasn't on trial for murder; Frank was. A wiser procedure would have been for the defense to seek to prove that Conley was *not* at the factory on the fatal Saturday, either by witnesses testifying to his presence elsewhere or by the negative proof of showing that there

was no evidence, beyond his own statement, that he *was* there. People were going in and out of the factory nearly all day and no one saw him there. If Conley *wasn't* there, the state's whole case (as presented) against Franks falls to the ground. The other elements would have no cogency, such as the testimony of Monteen Stover. If it was assumed that some other person had sneaked into first floor hallway after 11:15 when Halloway, the day watchman left, leaving the door open—some one who had followed Mary and had waited in the hallway to waylay and rob her, or attempt to rape her—then there would have been no chain of circumstantial evidence to weave around Conley's fantastic and wavering story.

It is within the bounds of plausibility that the police, distraught over their inability to find evidence to place Conley at the factory on Saturday and thus work up circumstantial evidence that he committed the crime, said to Conley, after they had secured some damaging, but not conclusive, evidence against Frank, something to this effect: "See here, you black nigger scoundrel, do you want to hang or do you want to do a year's stretch on the chain gang? It is the one or the other. Tell the story we want you to tell and all you will get is a year on the chain gang as an accessory. Keep on denying that you were at the factory the day the girl was murdered and you will hang for the murder." Faced with such an alternative, it is easy to account for the changes in Conley's original story, changes so numerous and so radical that he could not remember them himself and therefore mixed them up on the stand. Detective Scott's testimony for the state practically acknowledged this: He said that Conley in the process of revising his story, was told over and over his story didn't fit until Conley finally told a story that did fit—after, said Scott, "we cussed him quite a bit."

To me the most damaging point against Frank was not his denial that he knew Mary Phagan by name, nor his statement that he remained in his office from 12 noon until 12:45 without stirring out of it, except perhaps to go to the toilet, which he admitted he might have done without remembering that he had done so. To me the most damaging point in his statement to the jury was what seems to have been a deliberate effort to fix the time of Mary Phagan's arrival at his office as *before* 12 o'clock thus falsifying his original signed statement to the police. This was an effort, apparently, to make his 12-12:45 story stand up. His statement on this point was:

"From ten to fifteen minutes after Mrs. Freeman and Miss Hall left, this little girl, whom I afterwards found to be Mary Phagan entered my office and asked for her pay envelope."

He had already fixed the time of the departure of Emma Clark Freeman and Corinthia Hall at 11:45 a.m. They had testified that that was the time they left Frank's office. Other witnesses had corroborated that testimony. "Ten or fifteen minutes" after they left would fix Mary's arrival at or before 12 noon. That would also have her come and gone before Monteen Stover arrived. But it omits to take into consideration that Miss Hall, Frank's stenographer, did not check out before 12:02 and that Miss Hall did not see either Mary Phagan or Monteen Stover. In his statement to the police Frank had fixed the time of Mary's arrival at about 12:10.

Now, if Frank had been as open and above board in his statement to the jury as he apparently wished to appear (and he was remarkably clear and implicit about such minor details as washing his hands, lighting a cigarette, drinking a glass of soda, and so forth) it is curious that he should apparently deliberately convey a false impression about the time of Mary's arrival. If he had nothing to conceal there was no point in trying to make it appear that Mary had arrived before he had previously said she did.

For, if his conscience was clear, he had nothing really to worry about —if he or his counsel had been alert. The contention of the state was that while Monteen Stover was waiting in his office, he, Frank, was in the

metal room where he was engaged in the rape and murder of Mary Phagan. But the state's own witnesses established that Monteen arrived at Frank's office at 12:05 or not later than 12:07½ and left at about 12:10, whereas state witnesses fixed the time of Mary's arrival as at not earlier than 12:12. Monteen Stover thus had come and gone before Mary arrived! How the defense counsel missed that point and did not insist upon it, inasmuch as the state made so much of its contention that Frank did not know that Monteen Stover had been to his office and that the reason he did not know it was that he was at that time attacking Mary in a room across the hall, is something I cannot figure out. One of the most important contentions of the state against Frank was allowed to go unchallenged.

Superficially one of the most incriminating statements that Frank made, and one of which the state made great capital, was that he did not know Mary Phagan by name. But I ask the reader to make a test of recalling. Is it not true that you know or have known, quite a number of people by *sight* and not by *name?* Is it not also true that you have observed some of them in situations of intimacy with persons you know by name as well as by sight? For myself, I have worked in a number of offices where I have known a great many girls and women by sight and have never known them by name. I have nodded, smiled, greeted and even talked to them and known what their work consisted of and have even observed and/or heard whom they were on intimate terms with, or carrying on affairs with, without my ever knowing what their names were. I have known the first name of some but not their last names. Right now, I look across the street at a young couple in an embrace in the entrance of an apartment building. I know the boy's first name and that he works at a radio repair shop nearby. I know the girl by sight but I do not know her name or anything else about her.

It was perfectly possible for Frank to have known that Gantt was on intimate relations with one of the machine girls in the factory and that he heard gossip about "that little girl" and Gantt. He may even have known her first name, without knowing her last name. It was not alleged by anybody that Frank called her "Miss Phagan" or "Mary Phagan." Some said he called her "Mary" but that is no assurance he knew her last name.

But why did neither Frank nor defense counsel think of bringing up this very common human experience? It would have demolished one of the state's most damaging points.

Did this escape the defense because Frank was lying when he said he did not know Mary by name and because he was lying for a reason that is plausible in another hypothesis I have outlined further on?

7. ASPECTS OF THE TRIAL

The exhibits at the trial were listed as follows: (a) The cord found tied around the victim's neck, (b) the piece of white cloth, stained with blood, which was also found around the victim's neck, (c) four chips of wood, with red splotches on them, chipped from the second floor of the factory, in front of the ladies' dressing room, (d) a shirt allegedly found at the bottom of a trash barrel at Newt Lee's house; very bloody on both sides and high up in the sleeves, (e) the scratch pad on which the notes allegedly were written, (f) the two notes allegedly found under the head of the victim, (g) an affidavit signed by Mineola McKnight, swearing that Frank was very nervous when he came home for lunch on Saturday, that he did not eat lunch and returned almost immediately to the factory; and that Frank was drunk on Saturday night and threatened to kill himself and would not allow his wife to sleep in the same bed with him. She repudiated this affidavit on the stand, saying that it was untrue; that the police had forced her to sign it after threatening her at the police station and before allowing her to leave;

that she signed the affidavit without reading it just to be released from jail.

Conspicuously absent from these exhibits were:

(1) The mesh bag, which Mary Fagan took with her to the factory on the morning of April 26.

(2) Mary's pay of $1.20, plus any other change she may have had, and the envelope in which her pay allegedly was handed to her.

(3) The cloth or sack in which Conley alleged he wrapped the body of Mary Phagan before taking the body from the second floor to the basement.

These items are of the greatest importance precisely because they were never found.

It can reasonably be assumed that no such sack ever existed except in Conley's imagination. For there was no more reason for Conley or Frank to destroy or to hide the sack than there was for their destroying the other effects found in the basement with the body, such as the parasol, the hat and the ribbon.

Because no blood was alleged to have been found in the hallway or in the elevator in which the body was allegedly taken from the second floor to the basement, the existence of the sack in which the body was supposed to have been wrapped may have been suggested to Conley by the police to forestall any inquiry as to why there was no blood stains found in the elevator or in the hallway. (It is obvious from the testimony of Detective Scott that, as Conley kept on changing the story, the police persisted in telling him that his account "did not fit," that is, it did not conform to the other evidence the police had, upon which to base a case against Frank; and that finally, no doubt with promptings by the police, Conley did tell a story that "fit.")

But, inasmuch as there was enough blood from the gash at the base of the victim's skull thoroughly to mat the victim's hair, that blood probably would have oozed through the cotton cloth of the sack and stained the back and shoulders of the shirt or coat worn by Conley when he allegedly lifted the body (in the sack) to his shoulders, from which body allegedly fell.

When Conley told the police, on May 29, that he had lifted the body and it had fallen to the floor, where, according to the state, the fall produced a fan-shaped splotch of blood, the police were signally thoughtless in not proceeding immediately to inquire of Conley whether he was in his shirt-sleeves or wearing a coat at the time. They also should have searched his house for the garment he wore in order to examine it for blood stains.

The finding of a bloody shirt in Newt Lee's trash barrel was the third thing that caused Frank's own specially employed Pinkerton detective, Harry Scott, to suspect Frank of the murder. As already stated, Scott saw no reason for Frank's hiring a detective, if he was innocent, until the police had failed to find the murderer; if guilty the action of hiring Scott was based upon the assumption that Scott would not suspect his employer and would be diligent in leading the police search elsewhere. What deepened Scott's suspicion was Frank's answer when, unknown to Frank, it had been learned that Monteen Stover had gone to Frank's office at about 12:10 on the afternoon of the murder to get her pay and, finding no one in Frank's office, had left. Frank, in his signed statement to the police averred that he did not stir out of his office from noon until 12:45.

Scott pressed him about this statement, hoping Frank would remember some errand which took him out of the office at that time. But Frank was firm on the point. Scott asked, "Are your sure?" Of course Scott did not tell him why he was asking him that question. Scott felt that Frank was persistent in his negative because Scott was trying to fix in Frank's mind this important testimony so that Frank would not be shaken on it. His purpose was exactly the opposite; he hoped Frank would say he was out of the office for a few minutes around 12:10, in

the washroom or downstairs. Frank's replies convinced him Frank was lying.

The third thing that deepened Scott's suspicion of his employer was the finding of the bloody shirt in Newt Lee's trash barrel. Newt Lee had blandly acknowledged that he had owned a shirt of the material of the one found in his trash barrel, but that was two years ago, and he did not recognize it as one he had recently owned. Scott produced a piece of the shirt, without telling where it came from, and asked Frank if he had ever owned a shirt made of that material. Frank promptly replied that he hadn't. His reply was a little too prompt and firm; the reply would have been less suspicious if Frank had replied that he owned shirts of that material or that he may have once owned such a shirt for the material was a very common one for shirts.

It will be recalled that on the Monday following the murder, after he had undressed at police headquarters so that the police might inspect his underclothing and examine his body for marks, *Frank himself suggested that the police accompany him back to his house and examine the contents of his laundry bag,* which he said had not been emptied since before the murder. It was up to the police to make that suggestion, not up to Frank. The suggestion was suspiciously pat, as though Frank had overlooked nothing that would clear him of suspicion. Of course, nothing suspicious was found in Frank's laundry bag. After Frank had directed them to it, it would have been very remarkable if anything suspicious had been found therein. But, the absence of a blood-stained shirt in Frank's laundry bag is not evidence that Frank did not wear, or bring, home a blood-stained shirt on Saturday, April 26.

The thorough examination of Frank's entire body for bruises or scratches at the police station that Monday morning was prompted by Defense Counsel Arnold's statement, "The idea that my client attempted to assault Mary Phagan that afternoon is ridiculous. After such an encounter, his face and hands would be covered with bruises and scratches. Look at him! There is not a mark on him."

That there was a mark on Frank is no proof whatever (in spite of Mr. Arnold's statement) that Frank was not guilty of every charge that was lodged against him. Nor would the presence that morning of several scratches which he could not have satisfactorily accounted for been any proof whatever that Frank was involved in the murder of Mary Phagan.

The police always attach a great deal of importance to the presence or absence of blood stains at the scene of a crime. But, as Edmund L. Pearson has pointed out in *Studies in Murder,* blood stains even in a particularly bloody murder can be very thoroughly washed from the person of the murderer in less than thirty seconds. And, moreover, blood is rarely splattered freely about even in axe or hammer murders. When the murderer (who was Lizzie Borden, in Pearson's opinion, though she was freed of the charge) chopped the faces of Mr. and Mrs. Borden furiously and repeatedly with an axe, blood flowed freely from the wounds, but did remarkably little splattering and then only within a radius of a few inches of the blows.

If Mary Phagan's body was taken, in a sack or without being wrapped, from the second floor, to the elevator and thence to the basement and laid out there on the floor, *immediately, or very soon after the murder,* the chances are that whoever lifted or carried the body, whether in a cotton sack or not, got some blood stains on his person and on his clothing. The stains on his hands could have been easily and quickly removed; the stains on his clothing, if any, could not have been. But it was perfectly possible for Frank, Conley, Lee or any one else to have got a shirt very bady stained with blood in the commission of Mary Phagan's murder and to have walked through the streets, lingered at bars or soda fountains and talked to people without displaying the stains or creating suspicion. All that would have been necessary would have been for the murderer to put on a coat and button it; and, if the shirt collar were bloody, to turn the collar in.

Lee blandly acknowledged that he had owned a shirt of the same material as that of one found in his trash barrel—but that he had owned it two years ago! This might have been an inspired bit of cunning on Lee's part. A shirt would not be likely to have remained in the trash barrel for two years. Thus, in confessing he had once owned a shirt like the one that was found, he might have been exceedingly disingenuous. So frank would he seem to be, from the confession, that the deduction would normally be that the shirt was not his at all but had been planted there since the murder.

That was what happened. The shirt was produced in evidence at the trial, but the reason for producing it was never clear. No one took advantage of its presence. The question of the bloody shirt was studiously avoided by both the prosecution and the defense. Both sides assumed that the shirt had been planted; both sides apparently believed that the shirt had been planted there by the police at the time they were strongly of the suspicion that Lee was the murderer.

But, as Edmund L. Pearson has so firmly and rightly stated, the police are never quite as studied, blundering, conscienceless and malignant as writers of mystery and detective stories try to make out. The police are human beings and they often make mistakes but they usually are conscientious in their sworn duty. They don't go around planting clues, for the simple reason that, contrary to detective story fiction and public belief, the police are usually plagued by a multiplicity of "clues" rather than hampered by a lack of them. If they were foolish enough to complicate their job by planting a bloody shirt, they at least would take care that the shirt should be one that could be positively identified as belongong to somebody. Otherwise, they would simply have a bloody shirt on their hands and nothing to connect it with anything.

But this planting business is the sort of thing which might very easily occur to the layman, especially to the reader of the more carelessly written detective stories. Thus it might seem like a bright idea to the guilty person, who wanted to fix the crime on some one else; but it would not be the sort of thing a good cop or an experienced detective would think of doing.

The shirt was found by City Detective Black and Pinkerton Detective Scott. They never suspected the police of planting it there; but, when they and the police had satisfied themselves that Lee had no *direct* connection with the crime, their first deduction (and a sensible one) was that it might have been planted there by Conley or by Frank.

Scott was strongly of the suspicion that the shirt found in Lee's trash barrel belonged to Frank! But a suspicion or a belief is not admissable as evidence; and, moreover, he had no definite theory about how, if it was Frank's shirt, it had got there. Lee lived in the Negro section of town and Frank's presence in that neighborhood at any time, day or night, would almost certainly have attracted attention; for the presence of any white man, except the police, in the Negro section would be too uncommon to escape notice. If Conley had planted it there, he would certainly have told about it.

Arnold, several times during his summation, emphatically stated that he did not believe Lee committed the murder but that he did believe Lee knew much more about it than he revealed. Arnold was strongly of the belief that Lee found the body much earlier than he said he did and "knew more about the notes than he told."

Arnold implied that Lee had written the notes. And that was a cogent and plausible deduction; for the purpose of the notes obviously was not as the state contended, namely, that they were written to divert suspicion from the real murderer to the night watchman they were written to divert suspicion away from the night watchman.

The words of one of the notes, specifically, were these: "a long tall negro black" committed the murder, "(he said) play night night witch (night watch?) did it but that long tall black negro did it by his slef."

Lee was the night watchman. Lee was not long, tall and black, but short, heavy and chocolate colored.

Of course, it must be remembered that not only did Lee testify that he had never seen Conley and did not know him but that Conley had also testified that he did not know Lee. And, if Conley did write the notes, he meant to implicate Lee when he wrote "that negro hire doun here did this" and that he merely *guessed* that Lee was "long, tall and black." The two notes conflict, somewhat, and it may be that whoever wrote them meant to direct suspicion toward an unidentifiable "long, tall, black Negro."

Perhaps it is well that Arnold did not press his point about Lee's knowing more than he told; for, although the conjecture seems extremely remote, it is within the bounds of possibility that Lee himself was lurking in the shadows on the first floor that early noon when Mary Phagan left Frank's office with her pay; that he strangled her and pushed her down the hatchway or simply concealed her body behind the boxes until the factory was clear and then removed it by means of the elevator to the basement. And also it is within the bounds of remote possibility that he was paid by Frank to cremate the body but got terrified at the notion of being caught and therefore reported finding the body.

Thus the shirt might have been Newt Lee's; it might have been Conley's and planted there by Conley; it might have been Conley's and planted there at the suggestion of Frank; it might have been Frank's and planted there by Frank; and it may even have been a shirt stained with other than human blood (or even with paint or varnish—for, although the shirt was described as a bloody one—no chemist was introduced to testify that the stains were those of blood) and planted there by the police when suspicion was strong against Lee. At all events, the shirt was on exhibit at the trial but studiously ignored by both the prosecution and the defense. Why? I don't know.

About the missing mesh bag: Its disappearance, along with its contents, offers one motive for the murder—robbery. Many a murder has been committed for robbery of less than $1.20. Conley may have murdered Mary Phagan for that amount. That was the argument of the defense. Conley described in avid detail how he allegedly saw Monteen Stover come down the steps from Frank's office, after having received her pay envelope, holding her money in her hand and counting it. Monteen Stover did not see Conley. Nobody else did. There is strong reason for believing that Conley was lying about having seen Monteen Stover. He did not mention her name before the trial but his final statement to the police it was (too readily, I think) assumed that he meant Monteen when he spoke of seeing a girl wearing a green dress at the factory sometime after 12 noon. Monteen was wearing a brown raincoat. It is not likely that he could have seen the color of the dress she wore.

Was Conley's description of Monteen actually a very vivid image he had of Mary Phagan just before he throttled her for her meager little wages? Mary wore a lavender dress. Or did some unknown robber thus throttle Mary, some one who had followed her into the building and had waited in the shadows behind the boxes on the first floor until she came down the steps with her money? There was no one to stop such an intruder. The front door was open. Holloway, the day watchman, had gone. There was no one to guard the entrance, unless we except Conley's word that he was there.

Conley told the police that Frank took Mary's mesh bag and first laid it on his desk in his office, and then put it into the safe. That would have been a wise precaution on Frank's part. If no mesh bag or money belonging to Mary had been found, the motive of robbery would be apparent. And it is not probable that the superintendent of a factory would kill one of his employes in order to rob her of $1.20.

We must remember that, on that Sunday morning when the body was found, Frank opened the safe in the presence of several police witnesses and no mesh bag was disclosed therein. At the time Frank did this he did not know that Conley, nearly a month later would accuse him of the

crime and say that Frank had put Mary's mesh bag into his safe. Frank opened the safe ostensibly in order to make sure that a girl named Mary Phagan worked for him; he had just identified the body as that of a girl whom he had paid off the day before, but (so he said) could not tell if the body was that of Mary Phagan until he found her name on the pay roll.

Conclusive evidence, do I hear you say, that Conley was lying about Frank's having put the mesh bag into the safe? Not at all! If Frank had been clever and foresighted (and had committed the murder) that was just the right thing for him to do. He knew (let us say) that Conley knew the bag had been placed in the safe and that if Conley broke down and confessed his own complicity in the crime he would tell the police where the bag was, thereby giving the police reason for not believing that he (Conley) had killed the girl for her money. The police would demand that Frank open the safe. Frank would anticipate them; he would open the safe before they asked him to do so and, ostensibly, for another purpose. They would see there was no bag there; they would know that Frank would not kill the girl for her money but that a penniless Negro might; Conley, thereby, would not only appear to be lying about the bag but also tightening the noose around his own neck.

If Frank wanted to be very adroit in fixing the guilt upon Conley (and you must remember that it was Frank who suggested that Conley be questioned; Conley had not been among those known to have been at the factory that Saturday and so had not been thought of in connection with the crime until Frank suggested him as a possibility) he could not have better advised than to pick up the mesh bag and see to it that Conley saw him put it into the safe. Having done this, if Frank had been foresighted, he would have removed the bag after Conley was out of sight and irretrievably disposed of it. One question which Frank asked the police is strangely relevant at this point. Indeed, it is entirely pointless otherwise. Frank asked the police, "Did they find the girl's pay envelope —the envelope containing her salary?" He did not ask if they had found her mesh bag. He asked if they had found the *envelope.*

It is just possible that, after the murder, Frank was thorough and brilliant in the way murderers often are in covering up their tracks and in diverting suspicion toward others—and forgot one small precaution. Thus it may have been that, having put the mesh bag in the safe, in order that Conley might witness his doing it, and having taken the mesh bag out of the safe and carried it home with him, he looked into the bag and found that the money was there but the pay envelope was gone! It was too late, then to try to recover and destroy that pay envelope. Perhaps Mary had thrown it on the floor of his office after having extracted her pay! Maybe she had discarded the envelope in the hallway, or, worse still, in the metal room!

Neither the police nor the public prosecutor attached any significance to this apparently pointless question—one of the very first questions Frank asked the police! If Frank committed the murder and if he found, too late, that the mesh bag did not contain the envelope, the answer to that question was of paramount importance to Frank. If the envelope had been found, his next question undoubtedly would have been "Where?" Because, upon the answer would depend the entire structure of what he would tell the police. If the envelope had been found in his office, that would not be so bad. It would merely cause him to add another little detail: that he had seen her take the money out of the envelope, count it, throw the envelope on the floor, put the money in her bag and leave. (He later told the police and stated to the jury that he heard her footsteps *as she was going down the stairs.* His contention was that Mary did not go into the metal room; that she was murdered on the first floor or possibly in the basement, but not on the second floor.)

The police merely told Frank that the envelope had not been found. It did not occur to them to ask him why he wanted to know. If he

strangled Mary Phagan, he must have been immensely relieved to know that the envelope had not been found and further re-assured when they did not notice his concern about it. Now he could keep his story intact; he would not have to revise his strategy. He had just told the police that he knew nobody by the name of Mary Phagan. They had said she had been found dead in the basement of his factory. He had then asked if she worked at the factory and they had answered that she did. Then he had asked if they had found her pay envelope and they had answered no.

This question, important as the answer was to him at the moment, was one to which the police should have attached great importance for another reason besides the one I have stated. Why would Frank assume that she had a pay envelope and especially why should he assume that she had one *and it may not have been found?* There had been at least two women who had gone in and out of the factory on the previous day who had no reason for carrying their pay envelopes around with them, for they had not been paid that day; one of them had been paid the day before and the other wasn't even on the pay roll. Even if Frank had meant to imply that he could only identify Mary by her pay roll number which would be stamped or written on the outside of her pay envelope, there was no reason for him to assume that she had been paid on Saturday, much less for him to assume that it might have been missing when the body was first found. Presumably for all he knew at the time, the pay envelope and her pay were snugly intact in her purse. The police had said nothing to him about the fact that the girl's purse had not been found.

But, continuing with our temporary assumption that Frank was guilty and that our hypothesis concerning the strategy of his alibi is correct, the police's negative answer to his question about the pay envelope gave him the green light to go ahead. Everything was working out according to plan. His denial that he knew any factory worker by the name of Mary Phagan was only a ruse whereby he could innocently show that the safe contained no mesh bag while ostensibly opening the safe for another purpose—that of extracting the pay roll to look for Mary Phagan's name on it. If Frank wrote the notes to throw suspicion upon Conley, it all works into the hypothesis that Frank may have strangled Mary after having caused her, accidentally, to fall against a projecting piece of metal from a machine thus knocking her unconscious, and that he worked out an elaborate scheme to show that robbery was the motive and that the murder occurred on the first floor or in the basement.

Arnold said that whoever wrote the notes committed the murder. He said this in full knowledge of the fact that two semi-professional handwriting experts, bank clerks whose work included that of passing upon signatures to forfend against forgery—there were no professional handwriting experts in Atlanta at the time—testified that the notes were in Frank's handwriting but in an attempt to disguise it. Arnold was counting on the fact that other "experts" had testified that the handwriting was Conley's; his contention was that the writer of the notes was Conley and, ipse facto, the murderer was Conley. As I shall show later on, my most definite conviction about the case is that Conley did not write the notes, either of his own accord or at Frank's dictation. I don't know who wrote them; I have no conviction that Frank wrote them; but I feel pretty certain that Conley did not write them. And, as I shall show later on, Frank had very considerable reason for writing the notes, whereas Conley had no reason at all.

A profounder statement of the matter than that of Arnold's about the notes, however, would have been: the person who disposed of the mesh bag was the one who committed the murder. Frank could have written the notes and disposed of the mesh bag. But so could have Conley (although I do not believe so) and so could have Lee or some one else, some one who was never suspected of the murder.

There is, I contend after a deep study of the evidence, a very strong possibility that the murder was committed by some one who was never even suspected of it, much less apprehended.

In spite of the fact that the defense contended that Conley was the murderer, not Frank, and that the prosecution contended that Conley was an accessory after the fact of the murder, I have a strong ineradicable feeling that Conley had nothing whatever to do with it, that he was not at or even near the factory on the day the murder occurred but drinking in various blind-pigs and at home drunk, as he first stated to the police, that he was never at the factory on a Saturday. A dozen or so witnesses, whose testimony I consider reliable, including witnesses for the prosecution, testified they had never seen him at the factory on a Saturday; the witnesses who said they had seen him there on previous Saturdays were of questionable veracity and their testimony was pretty thoroughly impeached. I believe that the fantastic and variable stories he told—after his first statement to the police—were made up of snatches of stuff he had read in the newspapers or had been related to him, stuff that had been suggested to him by the police and stuff he had simply imagined.

I have explained how it is perfectly possible that Frank might have known Mary Phagan by sight and even known a lot about her, including her first name (not a witness testified that he knew her last name; it was only testified by several that he called her "Mary" in a familiar manner) but the damaging thing to him is that he did not explain and even demonstrate how it was understandable why he did not know her last name. When the factory was running with full force there were over a hundred girls working there. The chances are that he knew very few of them by their full names or by any names at all. He could not go on the stand and have all these factory workers parade before him and attempt to show that he did not know the full names of many of them, because the laws of Georgia prohibited him from going on the witness stand in his own defense; but he could have given such a demonstration to the police before he was brought to trial. Or at the very least, he could have brought it forcibly to his attorneys' attention how it was possible that he should not know Mary's last name. We must put it down as either extremely unfortunate that the defense did not make capital of this very common experience, or that the defense had good reasons for not doing so.

We can, I think, entirely disregard Conley's and the state's contention that Frank planned a day ahead to seduce Mary and that part of this plan was his refusal to give Helen Ferguson Mary's pay envelope on Friday and that another part of his plan was to engage Conley on Friday to come to the factory on Saturday and act as a lookout while Frank was engaged with Mary. Even if it were not pretty well established by other testimony that Helen Ferguson lied on the stand, or was mistaken, and that Schiff, not Frank, paid off the employees on Friday, and that Helen Ferguson said nothing to either Frank or Schiff about Mary's pay envelope, the state's contention on this point, I contend, is preposterous on the face of it.

Even if we allow that Frank refused Mary's pay envelope to Helen and even if we allow that Frank hoped to be alone with Mary at some time on Saturday, he could not possibly know what time Mary would come for her pay or even that she would come for it at all on Saturday. Even if it were true that he had refused to give Helen the envelope and told her that "Mary will have to come for it herself," there was no way of his finding out at what time or on what day she would come. She lived in the suburbs; she had no phone; she had worked only the first two days out of the week and had not been to the factory meanwhile; she might not come for her pay until Monday or later, for all Frank knew. The chances were, indeed, that she would not call for her pay on Saturday because that was a holiday.

Besides not having any way of knowing that Mary would come to

the factory on Saturday or at what time she would come, if she did, Frank also would have no way of forseeing who would be in his office or on the floor when she arrived. She might have come in at the same time that Mattie Smith came in, when there were at least two other people in his office; she might have come in about the same time Emma Clarke Freeman and Corinthia Hall arrived, when there were at least five persons in Frank's office. Lastly, although it is plausible enough to assume that Frank had designs on Mary's virtue (defense counsel conceded, a bit too willingly and pointedly I think, that Frank's moral character was not blameless) and that Frank conceived a lech for her after she arrived at his office and, while no one else was around and assaulted her, it is highly implausible, even ridiculous, to contend that he planned it all this way on Friday.

It is highly implausible that Frank *at any time* employed Conley to act as a lookout for him while he was engaged in immoral practices. He had no need to do so; he could have locked the doors and otherwise very easily have secured privacy against intrusion. And it would have been very foolhardy of him thus to take an irresponsible and drunken Negro roustabout into his confidence. In his cups Conley might easily have blabbed about it; and for Frank to repose so much in Conley would have been to deliver into Conley's hands very potent means of blackmail. It is possible that, at one time or another, Conley may have come upon evidence of Frank's immoral relationship with Daisy Hopkins or some other girl had *willingly* submitted to Frank and that Frank tolerated him on the premises, in spite of his frequent drunkenness, and kept him in the factory's employment because of this knowledge. But that Frank, or any other white man of Frank's position would have made Conley a confederate in his immoral practices especially *when there was no need to do so,* is something I cannot believe.

When I first began to study this case, I thought there was very considerable basis for the hypothesis that Conley garroted Mary for her money as she passed by him while he was hidden behind the boxes on the first floor and that he threw her body into the hatchway and later dragged the body across the basement floor intending to burn it, but was prevented by fright or drunkenness or some other cause from carrying out his intentions. That was the contention of the defense.

But closer study of the evidence and longer meditation upon it led me into my ineradicable belief that Conley had nothing whatever to do with the murder. It is a belief almost strong enough to be called a conviction. It still does not rule out the possibility that some one else, not Conley, garroted Mary on the first floor and disposed of her body in the manner assumed by the argument of the defense. But in this hypothesis, I, just as the defense and the prosecution had done, originally overlooked the very reliable testimony that the dust on the hatchway had not been disturbed, that the hatchway was nailed down, and that it could not have been reached that Saturday without disturbing a pile of boxes in front of it.

A strong point for the defense was overlooked in this testimony concerning the state of the hatchway. I can see a reason for the defense's overlooking it. That strong point would have fitted into a hypothesis that the murder was committed on the first floor but that the body was not thrown down the hatchway but thrown *down the elevator shaft!* The door of the elevator was unlocked. That was testified to by Holloway; he said he had forgotten to lock it Saturday morning when he left. Moreover, it was established that the victim's parasol was found at the bottom of the elevator shaft; it was not crushed by the elevator.

This point about the parasol's not being crushed was eagerly seized by the defense as tending to negate Conley's contention that the body was taken down in the elevator. If the elevator had descended to its normal position in the basement, the parasol would have been crushed. And the defense's hypothesis and contention was that the body had been thrown down the hatchway and dragged from its position in front of the

hatchway to the spot where it was found, in front of the furnace.

But the reason why the defense would not dwell upon the possibility that the body was hurled down the elevator shaft is two fold: (1) the body might have been hurled down the shaft *from the second floor* as well as from the first, and (2) Frank had a key to the elevator switch, by which the elevator might have been run up far enough to permit the body to be hurled down, if the elevator were not already above this point, without arousing the notice of Denham and White of the operation of the elevator.

So Frank might have hurled the body and the girl's effects down the elevator shaft from the second floor. And, after he was sure that the whole factory was cleared of other occupants, he might have run the elevator down just far enough in the basement to extract the body and all of the effects except the parasol (which he forgot) and dragged the body toward the furnace. Or, he might have walked down to the basement, pulled the body out of the shaft, intending to burn it, and removed the other effects but forgot about the parasol.

Here was a plausible hypothesis for the prosecution, just as it was a plausible hypothesis for the defense, namely that the body was hurled down the elevator shaft from the first floor, and, in both cases it conformed with the testimony that the hatchway was nailed down, that the dust on top of it was not disturbed and that the hatchway was not accessible without removing the boxes.

But, there you are, it was the contention of both the defense and the prosecution that Conley was at the factory at the time Mary Phagan was murdered but their contentions as to what he did there were diametrically opposite. Conley's fantastic story was, in a way, necessary to the hypothesis of the defense as well as to the hypothesis of the prosecution.

One can rule out Conley's testimony altogether and assume he was not near the factory on the day of the crime and yet cling to two perfectly plausible hypotheses (1) that Frank committed the crime unaided, and (2) the crime was committed by Lee or by some unsuspected person and Frank knew nothing about it.

THE NOTES

To me the notes alleged to have been found in the basement the morning the body was discovered do not have the ring of authenticity, either as notes written by Mary Phagan or as composed by Conley, or as dictated to him by Frank. The illiteracy of them is not consistent. Words like "mamma," "write," "watch" and "himself" are misspelled, but the other words are spelled correctly. "Hired" is written "hire," whereas "laid" (if that is the word) is correctly used and spelled. "Did" appears where the incorrect "done" would appear more likely. The use of the word "negro" is an anomaly; lower-class Negroes in the South do not use it, they use the word "niggah," especially in designating a Negro they wish to condemn and in spelling the word would use some approximation of the way they pronounce it.

Who, then, wrote the notes? Whoever wrote them, I think, achieved a very clumsy attempt to fake illiteracy. It is strange that the prosecution never noticed the peculiarities about the notes. Perhaps it did notice them but did not want to damage the fabric of Conley's story of what happened. Yet, though the state tended to disregard the notes, I think it could have attached significance to them.

Why? Because if the body was to be burned by Conley, according to plan, as Conley testified, there was no point in writing the notes. If the corpus delicti was to be destroyed by cremation in the furnace there was no reason for leaving any evidence of any kind, including a phony description of the slayer. But, if Conley had failed to return after lunch, as he had promised to do, there was reason for Frank to leave such notes. Time was pressing. Frank, according to his own story to the police was—so far as he knew—alone in the building from the time Lee came

at about four o'clock to ask permission to take a nap in the basement until Lee reappeared just before six to begin his night's work.

Frank, therefore, would have had a motive for forging the notes and leaving them on the dead girl's body. If Frank had such a revulsion against cremating the body himself that he would engage Conley to do it, he (Frank) would have reason to worry about the discovery of the body. Newt Lee was returning to work at 6.

Frank himself was due home for dinner at 6:30 or 7. Conley had not shown up. But Conley was an accomplice in the crime—that is, assuming that the state's case was true—and therefore it would be expedient for Frank to try to fix the crime upon an unidentified "tall, black negro," in the event that the body was discovered by Newt Lee during the night—before cremation could be effected the next day, a Sunday, when the factory was closed and empty.

Frank, a graduate of Cornell University, in writing such a note, could also have reasoned, in his panic, that the note (or notes) should appear to have been written by Mary Phagan to her mother after a struggle with an attacker in the basement in which the attacker had left her for dead. Mary had only a few months of public school education. Therefore any notes assumed to have been written by her should seem illiterate. But, as it has been proved time and again, it is very difficult for an educated person to write in an authentically illiterate manner. Education betrays them.

I will give you an illustration of what I mean. The late Ring Lardner was one of the very few and perhaps the only one except Mark Twain, of America's noted writers who spelled and used words as a badly educated person spells and uses them. Many other writers, from Artemus Ward on down to Will Rogers have used erratic spelling as a kind of humor, spelling according to sound rather than according to the dictionary

But, as Lardner once pointed out, Rogers, Streeter and other educated men who try to write like illiterates are prone to a common mistake: they mispell just the words that a true illiterate would trouble to spell correctly, and they misspell the words they think they know how to spell. Thus Lardner's Busher and other semi-literate characters would never spell Philadelphia, "Fillydalfy," as Artemust Ward did. He would look the word up on hotel stationery, a time-table or some easy reference source and would painfully, but correctly, spell it out as it should be spelled. But the same Busher, thinking he knew the spelling of such a common word as "asked," would spell it "ast," and thinking he knew such a familiar expression as "the World Series," would spell it "worlds serious." Lardner had hundreds of letters from ball-players to prove his point.

The above is not to assert, or even strongly to imply, that Frank wrote the notes found on Mary Phagan's body. They may just possibly have been written by some over-imaginative policeman or detective anxious to make a case against a "tall, black negro," or they might just possibly have been hastily scribbled by some too exuberant police reporter, who, in the general excitement of that early Sunday morning in the basement of the factory handed them to the police as something he had found, in order to "make a good story." But, I repeat, I don't believe Conley wrote the notes or that he ever saw them before they were shown to him. I don't believe that Conley knew what the purpose of them was supposed to be.

I believe the police, the corner's jury and the grand jury honestly believed in Frank's guilt and that they arrived at this belief from the testimony of Newt Lee, Monteen Stover, Frank's signed statement, and the affidavits of various persons, without giving any particular weight to Conley's testimony. For it must be remembered that Conley's story of his complicity in the crime did not come before the corner's jury or the grand jury at all. It was not concocted by Conley until *after Frank was indicted.* My theory is police prompted Conley in his final story and that

they subjected him to the third degree until he told a story that "fit" other evidence they had dug up. But I believe that Conley's fourth and final signed statement, before the trial, was accepted by the police only because, in general, it tended to bear out a hypothesis they had already arrived at.

My contention is that the hypothesis was faulty; that the procedures on both sides were honest enough but not marked by any particular intelligence and probably handicapped by the curious psychological phenomenon I have alluded to in the beginning of this analysis. Therefore I agree with Arnold that this case is "a deep, dark mystery."

On the evidence, Frank might have killed Mary Phagan but the evidence is not strong enough to preclude reasonable doubt.

Therefore, I say that, unless there were certain other indications of guilt derived from the behavior of witnesses and of the accused, which do not appear in the printed record, the jury was unjustified in finding the defendant guilty, as charged, and that, upon the evidence presented even in the digest of the proceedings, the Supreme Court of the State of Georgia should have set aside the verdict and granted a new trial. I think that Judge Roan and the other courts of appeal, including the United States Supreme Court were right in denying an appeal on the grounds of mistrial. The defense's evidence does not support its contention of trial error. Judge Roan and these other courts of appeal were called upon to decide only concerning the charges of trial error. But the Georgia Supreme Court judges were called upon to review a digest of the whole procedure of the trial, including that of testimony and the verbatim summations.

Governor Slaton therefore did right, in my opinion, in commuting the sentence to life imprisonment. He may have counted upon a further commutation of sentence by a later Governor or a complete pardon, when the hysteria aroused over the case had died down.

The lynching of Leo Frank was a crime against law and order, decency and humanity. No man who values his own freedom or has care for the legal guarantees of his rights can condone such an action or view it in any other way except extreme horror.

Dr. A. F. Niemoeller, of St. Louis, Mo., is probably the country's most brilliant, scholarly, scientific writer on sexological themes. Here are the titles he has done for the Haldeman-Julius Publications:

A. F. NIEMOELLER

SEX

Sex and Smell. A study of sexual osphresiology, or the part played by odors in sexual attraction and stimulation. 35c.

PROSTITUTION

Business Side of the World's Oldest Business. Organization, management, and earnings of prostitution. 35c.

Sexual Slavery in America. A history of illicit sex relations (including prostitution and white slavery) in Colonial times, in the Slave South, and in Modern times. A 60,000-word book. $1.50.

Fleshpots of Antiquity. The lives and loves of ancient courtesans. By Henry Frichet. Translated from French, with foreword, introductory essays and notes by A. F. Niemoeller. $1.50.

SEX, ABNORMAL ASPECTS OF

Essays of an Erotologist. Some observations on little discussed aspects of sex. 35c.

Bestiality in Ancient and Modern Times. A study of the sexual relations of man and animals in all times and countries. 35c.

Bestiality and the Law. A resume of the law and punishments for bestiality with typical cases from 15th century to the present. 35c.

Artificial Impregnation. A study of the history, methods and ethics of conception without cohabitation. 35c.

SEX CLASSICS

De Sade on Virtue and Vice. Selections from the writings of the Marquis De Sade (after whom the practice of Sadism was named). Illustrating his views on morality and sex. Translated by A. F. Niemoeller. 35c.

Bundling—Its Origin, Progress and Decline in America. Henry Reed Stiles. A rare study in sexual morals. Introduction by Niemoeller. 75c.

The Secret Laws of Sex. El Ktab, or the Khodja Omer Haleby—An Arabic scholar's interpretation of Koranic law as it pertains to sexual relations. Trans. and condensed by A. F. Niemoeller. 35c.

SEXUAL HEALTH

Aphrodisiacs and Anti-Aphrodisiacs. What science has learned about the problem of increasing the average man's capacity for a fuller sex life. 60c.

MARRIAGE AND COURTSHIP

Feminine Hygiene in Marriage. $1.50

The Funny Side of Divorce. Various ridiculous reasons and complaints that have been presented as grounds. 35c.

SEXUAL MORALS

Chastity Safeguards Mechanical means of preventing sexual indulgence, in both men and women, employed in different times & countries. Niemoeller. 35c.

Bought singly, the above 15 titles would cost $9.35, but if you will order the entire set of Niemoeller books, we will let you enjoy the bargain price of only $6.25, a saving of more than $3. Send $6.25 and ask for A. F. NIEMOELLER'S COMPLETE LIST.

HALDEMAN-JULIUS PUBLICATIONS, GIRARD, KANSAS

DAVID OLIVER CAULDWELL
Author of Growing List of H-J Books

Dr. Cauldwell, born on June 17, 1897, at Cleveland, Ohio, is doing important, useful educational writing on Sexology and related subjects. Below we list the booklets he has done for us so far. Check them carefully and you will be surprised how many of them you will want to read.

Dr. Cauldwell's father — deceased since 1917 — was Gilbert Cauldwell, M. D., surgeon and anatomist. D. O. Cauldwell was schooled at Cleveland—at Purdue—and entered medical studies at the Chicago College of Medicine and Surgery. Later this school, together with Bennett Medical College, was merged with Loyola U. (Chicago), where the ecclesiastical authorities in control failed to appreciate the advanced students of the merger, most of whom drifted away. A Freethinker, Cauldwell was forever in bad odor with the pious professors. He then took his transcript and was welcomed at the Universidad Nacional de Mexico, having fortunately, in earlier days, gained a command of Spanish. There he studied, practiced and took his degrees in medicine and science.

After several years of private (general) practice, Dr. Cauldwell became an Associate Medical Officer of the War Department and served also as an army contract surgeon. Later he served in war industries, as follows: Surgeon, Norfolk Dam Project; Ellis and Mountain Home, Arkansas; Medical Director, Seneca (Ill.) Shipyard. Then he returned to the War Department as neuro-psychiatrist, Induction Service. Then he became medical examiner at Ingalls, Pascagoula, Shipyard.

Dr. Cauldwell gave up his practice in 1945 to devote himself to writing, which he tackled with the utmost earnestness. From eight to 14 hours daily are devoted to reading, writing and research. Two or three hours each day are given to outdoor activity around his "Farm-Haven," in Alabama

Here are the booklets (each 15,000 words in length, page size 5½ x 8½ inches) that Dr. Cauldwell has written for Haldeman-Julius:

PSYCHOANALYSIS & PSYCHIATRY

What Makes the Neurotic Personality Behave that Way? What psychiatry has learned about your reactions to the anxieties, conflicts and strain of modern living. 35c.

Schizophrenia and Mental Danger Signals. What to do about schizophrenic tendencies—a study of behavior and mental disturbances. 35c.

Studies in Psychosexuality. Revealing, strange and unusual sex complexes, and remedial means. 35c

So You're a Neurotic! Treatment possibilities and treatment technique for men, women and children who feel too keenly the emotional strains of living. 35c

Sexual Fear Fixation—What To Do About It. How to banish personal fears and thus overcome their damaging effects. Cauldwell. 35c.

How You Can Become a Practical Psychoanalyst. Workable applications of Freud, Jung, Stekel and others made easy. Principles of Psychoanalysis you can use in business and everyday relations with other persons. 35c.

So You Married an Alcoholic! Facts About Alcohol, alcoholics, Neurosis and Neurotics. 35c.

Practical Psychiatry for Everyone. How to be your own mind doctor and solve mental problems for yourself and others. 35c.

Easy Lessons in Practical Psychoanalysis. A workable guide for the use of amateurs who want to understand themselves and others better and thereby be happier. 35c.

MARRIAGE AND COURTSHIP

Psychology of Harmonious Marriage. Guide to husbands, wives, sweethearts and lovers. Cauldwell. 35c.

Husbands and Wives Can Be Satisfactory Lovers. A guide to the esthetics of intimacy, with hints on how sex can be made beautiful. 35c.

Ideas Which Wreck Marriage Before the Honeymoon Begins. The groom's dilemma—is his bride a virgin? The bride's perplexity—will he know? A book about the hymen, and virginity in both sexes. 35c.

SEX

Doubting Fathers—Psychological and Biological Paternity. Can science prove who is whose father? 35c.

Semen for Sale. All about artificial insemination—how it's done. Test-tube babies—latest facts. Husbands for hire. Fathers by proxy. 35c.

SEX, ABNORMAL ASPECTS OF

Why Sex Offenders Act That Way. Psychiatry shows that sex delinquents are very sick people. Cauldwell. 35c.

The Truth About Homosexuality in Man and Woman. Facts cleanly presented to help improve individual and sociological concepts. 35c.

Perverted Haters of Sex. There are persons who hate sex walking among us every day—A candid study of a strange perversion. 35c.

Sex Crimes Among Juveniles. A study of various delinquencies. 35c.

Why Males Wear Female Attire. Strange stories, weird confessions, historical data, and scientific explanations of transvestism. 35c.

What Is a Hermaphrodite? A study of persons of either sex whose genital organs, mental integration and chemical (hormonal) characteristics embrace the characters or characteristics of both sexes. 35c.

SEXUAL HEALTH

Prostate Gland Diseases & Their Treatment. Cauldwell. 35c.

What Women Should Know About the Menopause. The prevention of suffering through an understanding of the hygiene of life's natural changes. Cauldwell. 35c.

What to Know and Do About the Male Climacteric. Advice which can help to keep men from going off the deep end, including a generous question and answer section. 35c.

The Treatment of Impotence in Man and Woman. Kinds of impotence in both sexes; treatment of frigidity in woman; the psychology of impotence. 35c.

Sterility in Men and Women. A study of causes and treatment possibilities for those who are denied parenthood. 35c.

The Latest So-Called Miracle Cures for Syphilis. The facts about penicillin. History and facts about syphilis, its complications and treatment. 35c.

The Latest So-Called Miracle Cures for Gonorrhea. Are the Sulfas and Penicillin Miracle Drugs? Is Prophylaxis Effective? 35c.

Is Sexual Sterilization Easy? A study of various facts about sterilization, including its legal status. 35c.

Effects of Castration on Men and Women. Accidental, voluntary and involuntary castration. Eunuchism and history—medical treatment and aspects. 35c.

Sex and Psycho-Somatology. A study of the various aspects of the relations of Psycho-Somatic medicine to sexuality and sexual disorders, including important endocrine data. 35c.

Hypersexuality—Is Anyone Oversexed? Viewpoints of physiologists, psychiatrists, and sociologists on precocious sexuality and nymphomania. 35c.

What Can A Sick Person Believe? A study of what is valid in the new medical magic and a summary of information for both the sick and the well. 35c.

SEXUAL MORALS

Problem of Unwed Fathers. With sidelights on unmarried mothers and illegitimate children. Cauldwell. 35c.

When Are Girls Promiscuous? Love's physiology, for the virgin and her sister, with questions & answers. Cauldwell. 35c

A Modern Analysis of Biblical Sex Scandals. 35c.

Bought singly, the above 35 titles, at 35c, would cost $12.25, but if you will order the entire set of Cauldwell books, we will let you enjoy the bargain price of only $9.10, a saving of more than $3. Send $9.10 and ask for DR. CAULDWELL'S 35 Books. They will be shipped immediately prepaid. Mail orders to:

HALDEMAN-JULIUS PUBLICATIONS, GIRARD, KANSAS